

**AGREEMENT NO.
2020-03
Financial Advisor Services**

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF NORTH PORT, FLORIDA, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY," and PFM FINANCIAL ADVISORS LLC, a Foreign Limited Liability Company, registered to conduct business in the State of Florida, hereinafter referred to as "CONSULTANT."

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to diligently and timely perform services for the CITY relating to Financial Auditing Services as identified in the Request for Proposal No. 2020-03, and CONSULTANT'S proposal submitted August 29, 2019. The overall Scope of Services is described in **Exhibit "A,"** with detailed tasks and associated Fee Schedule in **Exhibit "B."** Both exhibits are attached hereto and incorporated as if set forth fully herein.
- B. This Agreement begins on the date the last party executes it and shall continue through the completion of the project or as otherwise provided for herein. The term of this Agreement is for three (3) years, and may be extended for two (2) additional one (1) year periods by mutual agreement and within budgetary limitations, under the same terms and conditions as provided herein.

2. COMPENSATION AND PAYMENT FOR CONSULTANT'S SERVICES

A. COMPENSATION

1. CONSULTANT shall receive a **SIX THOUSAND DOLLARS (\$6,000.00)** annual retainer as compensation for its services, anything above the retainer fee will be based off the **Exhibit "B"** Fee Schedule. This compensation includes all profit, direct and indirect labor costs, personnel related costs, overhead and administrative costs, travel related out-of-pocket expenses and costs, and all other costs which are necessary to provide the services as outlined in this Agreement and its Exhibits.
2. **NON-APPROPRIATION:** The parties acknowledge and agree that the obligations of CITY to fulfill financial obligations of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement, or referenced herein to which CITY is a party, are and shall remain subject to the provisions of Florida Statutes Section 166.241, regardless of whether a particular obligation has been expressly so conditioned. The CITY agrees to exercise all lawful and available authority to satisfy any financial obligations of the CITY that may arise under this Agreement; however, since funds are appropriated annually by the City Commission on a fiscal year basis, the CITY'S legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by the City Commission (nor shall such liability arise if, a request for such appropriations is excluded from the budget approved by the City Commission). Notwithstanding the foregoing, no Commissioner, officer, employee, director, member or other natural person or agent of CITY shall have any personal liability in

connection with the breach of the provisions of this Section or in the event of a default by CITY under this Section. This Agreement shall not constitute an indebtedness of CITY nor shall it constitute an obligation for which CITY is obligated to levy or pledge any form of taxation or for which CITY has levied or pledged any form of taxation.

B. METHOD OF PAYMENT

1. The CONSULTANT will be paid through the Finance Department in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes, upon the Department's receipt of the CONSULTANT'S invoice and written approval of same by the CITY'S Administrative Agent indicating that services have been rendered in conformity with this Agreement. The CONSULTANT must submit an invoice for payment to the CITY for those specific tasks as described in the Scope of Services that were completed during the invoicing period for which payment is sought.
2. For those specific services that were partially completed during an invoicing period, progress payments will be paid in proportion to the percentage of completed work on those specific services, as approved in writing by the CITY'S Administrative Agent.
3. The CONSULTANT'S invoices must be in a form satisfactory to the CITY'S Finance Department.

3. INDEMNIFICATION

- A. **TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONSULTANT ASSUMES ALL LIABILITY FOR, AND RELEASES AND AGREES TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY, ITS COMMISSIONERS, OFFICERS, AGENTS, AND EMPLOYEES, FROM ALL LIABILITIES, FINES, CLAIMS, ASSESSMENTS, SUITS, JUDGMENTS, DAMAGES, LOSSES AND COSTS, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS, WHETHER SUCH FEES AND COSTS ARE INCURRED IN NEGOTIATIONS, AT THE TRIAL LEVEL OR ON APPEAL, OR IN THE COLLECTION OF ATTORNEYS' FEES), ARISING OUT OF ANY ACTS, ACTIONS, BREACHES, OF THE CONSULTANT, OR CONSULTANT'S OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, SUB-CONSULTANTS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CONSULTANT IN THE PERFORMANCE OF, OR THE FAILURE TO PERFORM, THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE CONSULTANT SHALL NOT INDEMNIFY FOR THAT PORTION OF ANY LOSS OR DAMAGES PROXIMATELY CAUSED BY THE NEGLIGENT ACT OR OMISSION OF THE CITY. THIS AGREEMENT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.**
- B. **THE CITY ACKNOWLEDGES AND AGREES THAT THE SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN THOSE MEETING OR EXCEEDING THE INDUSTRY STANDARD OF CARE, MAY RESULT IN CLAIMS AGAINST, OR FINANCIAL RESPONSIBILITY FOR, CITY. THE INDEMNIFICATION PROVISIONS IN THE PRECEDING PARAGRAPH SHALL NOT APPLY TO CLAIMS AGAINST OR FINANCIAL LOSSES TO CITY OR RELATED LIABILITY UNLESS SUCH CLAIMS, LOSSES OR LIABILITY ARE PROXIMATELY CAUSED BY THE CONSULTANT'S NEGLIGENT OR RECKLESS PERFORMANCE OF THIS AGREEMENT OR CONSULTANT'S WILLFUL MISCONDUCT OR BREACH OF ITS FIDUCIARY OR LEGAL DUTY.**

- C. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONSULTANT SHALL FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, AND ITS COMMISSIONERS, AGENTS, EMPLOYEES AND ASSIGNS FROM ANY DEMANDS, CLAIMS, SUITS, ACTIONS, JUDGMENTS, DAMAGES, FINES, FEES, TAXES, ASSESSMENTS, PENALTIES, LOSSES, EXPENSES, COSTS OF EVERY TYPE AND DESCRIPTION, AND REASONABLE ATTORNEYS' FEES (AT BOTH TRIAL AND APPELLATE LEVEL), ARISING FROM OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET OR INTELLECTUAL PROPERTY RIGHT; PROVIDED, HOWEVER, THAT THE FOREGOING OBLIGATION SHALL NOT APPLY TO THE MISUSE OR MODIFICATION OF CONSULTANT'S PRODUCTS BY THE CITY OR ANY OF ITS COMMISSIONERS, AGENTS, EMPLOYEES, AND ASSIGNS, OR TO THE OPERATION OR USE OF CONSULTANT'S PRODUCTS BY THE CITY OR ANY OF ITS COMMISSIONERS, AGENTS, EMPLOYEES, AND ASSIGNS IN A MANNER NOT CONTEMPLATED BY THE AGREEMENT.
- D. THE CITY MUST PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT THE CONSULTANT MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM, THE CITY SHALL PROMPTLY NOTIFY THE CONSULTANT IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED), OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (SUCH AS FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED IN SECTION 18 NOTICES OF THE AGREEMENT. NOTIFICATION MAY ALSO BE PROVIDED BY FAX TRANSMISSION TO THE NUMBER PROVIDED IN SECTION 18 NOTICES OF THE AGREEMENT, IF PROVIDED.
- E. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS AGREEMENT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE CITY AND SUCH INSURANCE COVERAGE WILL NOT BE DEEMED A LIMITATION ON THE CONSULTANT'S LIABILITY UNDER THE INDEMNITY PROVIDED IN THIS SECTION. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).
- F. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE CITY AS SET FORTH IN FLORIDA STATUTES, SECTION 768.28. THE TERMS OF THIS SECTION FOR INDEMNIFICATION SURVIVE TERMINATION OR COMPLETION OF THIS CONTRACT.

4. CONSULTANT'S INSURANCE

A. INSURANCE

Before performing any work pursuant to this Agreement, CONSULTANT must procure and maintain, during the life of this Agreement, the insurance listed below, unless otherwise specified. The policies of insurance must be primary and written on forms acceptable to the CITY and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida, and meet a minimum financial AM Best and Company rating of no less than "Excellent." No changes are to be made to these specifications without prior written specific approval by the City Manager or designee. The City Manager or designee may alter the amounts or types of insurance policies required by this Agreement upon agreement with CONSULTANT.

1. Workers' Compensation and Employers' Liability Insurance: Coverage to apply for all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$100,000 each accident; \$100,000 each employee; and \$500,000 policy limit for disease.
2. Professional Liability Insurance: Minimum \$1,000,000 per occurrence for this project with a \$1,000,000 policy term general aggregate. Coverage shall be extended beyond the policy year term either by a supplemental extended reporting period (ERP) with as great of duration as available, with no less coverage and reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made. The CITY prefers all Professional Liability Insurance be written on an Occurrence Form; however, in the event that the professional liability insurance required by the Agreement is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained for a period of two (2) years or an extended reporting period (ERP) with tail coverage will be obtained and maintained for a period of two (2) years beginning at the time work under this Agreement is completed.
3. Commercial General Liability Insurance: Occurrence form required. Aggregate must apply separately to this Agreement. Minimum \$500,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 fire damage.
4. Automobile Insurance: To include all vehicles hired and non-owned vehicles with limits of not less than \$300,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.

B. WAIVER OF SUBROGATION

All required insurance policies are to be endorsed with a waiver of subrogation, excluding professional liability. The insurance companies, by proper endorsement or through other means, agree to waive all rights of subrogation against the CITY, its Commissioners, officers, officials, employees and volunteers, and the CITY'S insurance carriers, for losses paid under the terms of these polices that arise from the contractual relationship or work performed by the CONSULTANT for the CITY. It is the CONSULTANT'S responsibility to notify its insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. Additionally, the CONSULTANT, its officers, officials, agents, employees, volunteers, and any sub-consultants, agree to waive all rights of subrogation against the CITY and its insurance carriers for any losses paid, sustained, or incurred, but not covered by insurance, that arise from the contractual relationship or work performed. This waiver also applies to any deductibles or self-insured retentions for which the CONSULTANT or its agents may be responsible.

C. POLICY FORM

1. All policies, required by this Agreement, with the exception of Professional Liability and Workers' Compensation, or unless Risk Management through the CITY'S Purchasing Office gives specific approval, are to be written on an occurrence basis and must name the City of North Port, Florida, its Commissioners, officers, agents, employees, and volunteers as additional insured as their interest may appear under this Agreement. Claims Made Policies will be accepted for professional liability and hazardous materials and such other risks as are authorized by the CITY'S Purchasing Office. All Claims Made Policies contributing to the

satisfaction of the insurance requirements herein must have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, CONSULTANT agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.

2. Insurance requirements itemized in this Agreement, and required of the CONSULTANT, must be provided by or in behalf of all sub-consultants to cover their operations performed under this Agreement. The CONSULTANT is responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to sub-consultants.
3. Each insurance policy required by this Agreement shall:
 - a. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - b. Be endorsed to state that coverage shall not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. The CONSULTANT is to notify the CITY'S Purchasing Office by written notice as provided in this Agreement.
4. The CITY has the right to review, at any time, coverage, form, and amount of insurance.
5. **The procuring of required policies of insurance must not be construed to limit CONSULTANT'S liability nor to fulfill the indemnification provisions and requirements of this Agreement. The extent of CONSULTANT'S liability for indemnity of the CITY shall not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the CONSULTANT and its carrier.**
6. The CONSULTANT is solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and is solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the CITY is an insured under the policy. CONSULTANT'S insurance is considered primary for any loss, regardless of any insurance maintained by the CITY. CONSULTANT is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or portion of any loss that is not covered by any available insurance policy.
7. All certificates of insurance must be on file with and approved by the CITY before commencement of any work under this Agreement. All certificates of insurance required herein must be accompanied by a copy of the additionally insured documents/endorsements. Certificates of Insurance evidencing Claims Made or Occurrences form coverage and conditions to this Agreement, as well as the Agreement number and description of work, are to be furnished to the CITY'S Purchasing Office (4970 City Hall Boulevard, Suite 337, North Port, FL 34286) prior to commencement of work AND a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. All insurance certificates shall be received by the CITY'S Purchasing Office before the CONSULTANT will be allowed to commence or continue work. The Certificate of Insurance issued by the underwriting

department of the insurance carrier shall certify compliance with the insurance requirements provided herein.

8. Notices of Accidents (Occurrences) and Notices of Claims associated with work being performed under this Agreement shall be provided to the CONSULTANT'S insurance company and the CITY'S Purchasing Office as soon as practicable after notice to the insured.

5. RESPONSIBILITY OF THE CONSULTANT

- A. Incorporation of Proposal Documents: The Request for Proposal No. 2020-03 ("RFP"), including attachments and addenda, and the Consultant's response to the RFP, are specifically made a part of this Agreement and are incorporated as if set forth fully herein. In the event of a conflict between or among the documents or any ambiguity or missing specifications or instruction, the following priority is established:
 1. This Agreement (Contract No. 2020-03) Approved by Commission, and any attachments.
 2. The RFP, including any and all attachments and addenda.
 3. CONSULTANT'S response to the RFP.
 4. Specific direction from the City Manager.
- B. The CONSULTANT is responsible for the professional quality, technical accuracy, and the coordination of all reports, designs, specifications, other documents and data used or produced by or at the behest of the CONSULTANT under this Agreement. The CONSULTANT must, without additional compensation, correct or revise any errors or deficiencies in its reports, designs, specifications, other documents and data.
- C. If the CONSULTANT is comprised of more than one legal entity, each entity is jointly and severally liable hereunder.
- D. The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of this Agreement.
- E. CONSULTANT will perform its services in accordance with generally accepted industry standards and practices customarily utilized by competent CONSULTANT firms in effect at the time CONSULTANT'S services are rendered. The CONSULTANT covenants and agrees that it and its employees are bound by the Standards of Conduct of Florida Statutes Section 112.313, as it relates to work performed under this Agreement. The CONSULTANT must incorporate the provisions of this paragraph in any sub-contract into which it might enter with reference to the work performed.

- F. The CONSULTANT must comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof.
- G. The CONSULTANT must maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement, and have such records available and accessible at the CONSULTANT'S offices for the purpose of inspection, audit, and copying upon reasonable advance notice and during normal business hours by the CITY, or any of its authorized representatives. Such records shall be retained for a minimum of three (3) years after completion of this Agreement.
- H. Public Records Law: In accordance with Florida Statutes Section 119.0701, CONSULTANT must comply with all public records laws, and shall specifically:
1. Keep and maintain public records required by the CITY to perform the service.
 - a. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.
(See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
 - b. "Public records" means and includes those items specified in Florida Statutes, Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the CITY. CONSULTANT'S records under this Agreement include but are not limited to, supplier/sub-contractor invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during this Agreement.
 2. Upon request from the CITY'S custodian of public records, provide the CITY, at no cost, 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 for by law. All records kept electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format compatible with the information technology systems of the CITY.
 3. Ensure that project records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law or judicial or regulatory process for the duration of the Agreement and, if CONSULTANT does not transfer the records to the CITY following completion of this Agreement, for the time period specified in General Records Schedule GS1-SL for State and Local Government Agencies.
 4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in CONSULTANT'S possession 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 this Agreement, 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 the completion of this Agreement, CONSULTANT shall meet all applicable requirements for retaining public records.

5. IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES OR TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CUSTODIAN OF PUBLIC RECORDS, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, (941) 429-7063 OR HOTLINE (941) 429-7270; E-MAIL: publicrecords@cityofnorthport.com.

6. Failure of CONSULTANT to comply with these requirements shall be a material breach of this Agreement. Further, CONSULTANT may be subject to penalties under Florida Statutes Section 119.10.

6. OWNERSHIP AND USE OF DOCUMENTS

- A. All documents, or reproducible copies, developed by the CONSULTANT in connection with its services, including but not limited to reports, designs, specifications, and data, must be delivered to, and are the property of the CITY as they are received by the CITY, and when CONSULTANT has been fully compensated as set forth herein. CONSULTANT may keep copies of all work products for its records. The CONSULTANT hereby assigns all its copyright and other proprietary interests in the products of this Agreement to the CITY. Specific written authority is required from the CITY'S Administrative Agent for the CONSULTANT to use any of the work products of this Agreement on any non-CITY project.
- B. Notwithstanding the above, any reuse of the work products by the CITY on other projects will be at the risk of the CITY.

7. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL

- A. The timely performance and completion of the required services is vitally important to the interest of the CITY. The CONSULTANT must assign a Project Manager, together with such other personnel as are necessary, to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. The personnel assigned by the CONSULTANT to perform the services of this Agreement must comply with the information presented in the professional services response proposal made a part hereof by reference. The CONSULTANT must ensure that all key personnel, support personnel, and other agents, are fully qualified and capable to perform their assigned tasks. Any change or substitution to the CONSULTANT'S key personnel must receive written approval from the CITY'S administrative agent before said change or substitution can become effective.
- B. The services to be rendered by the CONSULTANT must commence within one (1) week of the CONSULTANT'S receipt of the written Notice to Proceed from the CITY.

- C. All work performed under the terms and conditions of this Agreement must be completed within the time limits as set forth herein, subject only to delays caused through no fault of the CONSULTANT or the CITY. Time is of the essence in the performance of this Agreement.
- D. The CONSULTANT must provide the CITY'S Administrative Agent with monthly written progress reports concerning the status of the work. The CITY'S Administrative Agent may determine the format for this progress report. The CITY is entitled at all times to be advised, at its request and in writing, as to the status of work to be performed by the CONSULTANT.
- E. In the event unreasonable delays occur on the part of the CITY or regulatory agencies as to the approval of any plans, permits, reports, or other documents submitted by the CONSULTANT which delay the Project Schedule completion date, the CITY must not unreasonably withhold the granting of an extension of the Project Schedule time limitation equal to the aforementioned delay.

8. OBLIGATIONS OF CITY

- A. The CITY'S Administrative Agent is designated to serve as project coordinator and to do all things necessary to properly administer the terms and conditions of this Agreement. If necessary, a specific program manager will be authorized to perform the responsibilities of the CITY'S Administrative Agent. The CITY will designate any specific program manager in the Notice to Proceed. The responsibility of the CITY'S Administrative Agent include, but are not limited to:
 - 1. Examination of all reports, sketches, drawings, estimates, proposals, and other documents presented by the CONSULTANT, and to render in writing, decisions pertaining thereto within a reasonable time.
 - 2. Transmission of instructions, receipt of information, interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.
 - 3. Review for approval or rejection all of the CONSULTANT'S documents and payment requests.
- B. The CITY will, upon request, furnish the CONSULTANT with all existing data, plans, studies and other information in the CITY'S possession which may be useful in connection with the work of this Project, all of which are and remain the property of the CITY and must be returned to the CITY'S Administrative Agent upon completion of the services to be performed by the CONSULTANT.
- C. The CITY'S Administrative Agent will conduct periodic reviews of the work of the CONSULTANT necessary for the completion of the CONSULTANT'S services during the period of this Agreement, and may make other CITY personnel available, where required and necessary to assist the CONSULTANT. The availability and necessity of said personnel to assist the CONSULTANT will be determined solely within the discretion of the CITY. The CITY'S technical obligations to this Project, if any, are stated in Specific Authorizations and Work Authorizations.
- D. The CITY will not provide any services to the CONSULTANT in connection with any claim brought on behalf of or against the CONSULTANT.

9. TERMINATION

- A. Termination with or without Cause: The performance of work under this Agreement may be terminated with or without cause by the City Manager in whole or in part or whenever the City Manager determines that termination is in the CITY'S best interest. Any such termination shall be effected by the delivery to the CONSULTANT of a written notice of termination at least thirty (30) days before the date of termination, specifying the extent to which performance of the work under this Agreement is terminated and the date upon which such termination becomes effective. Except as otherwise directed, the CONSULTANT must stop all work on the date of receipt of the notice of termination or other date as specified in the notice; place no further orders or sub-contracts for material, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and sub-contracts; and settle all outstanding liabilities and claims. CONSULTANT will be paid only for such work performed and materials supplied up to the termination. Under no circumstances will the CITY make any payment to CONSULTANT for services that have not been performed or that are performed subsequent to the termination date. In the event of termination, the CONSULTANT must deliver to the CITY all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the CONSULTANT in connection with its performance under this Agreement. The CITY must, upon receipt of the aforesaid documents, pay to the CONSULTANT and the CONSULTANT must accept as full payment for its services, a sum of money equal to (1) the fee for each completed and accepted task as shown in Exhibit A – Scope of Services and Exhibit B – Fee Schedule, plus (2) the percentage of the work completed in any commenced but uncompleted task, less (3) all previous payments in accordance with Section 2 of this Agreement and any amounts withheld by the CITY to settle claims against or to pay indebtedness of the CONSULTANT in accordance with the provisions of this Agreement.
- B. Funding in Subsequent Fiscal Years: It is expressly understood by the CITY and the CONSULTANT that funding for any subsequent fiscal year of the Agreement is contingent upon appropriation of monies by the City Commissioners, and the continuing receipt of state or federal grant funding, if applicable. In the event that funds are not available or appropriated, the CITY reserves the right to terminate the Agreement. The CITY will be responsible for payment of any outstanding invoices and work completed by the CONSULTANT prior to such termination.
- C. Abandonment: In the event that the CONSULTANT abandons performance under this Agreement, the City Manager or designee may terminate this Agreement upon three (3) calendar days' written notice to the CONSULTANT indicating the CITY'S intention to do so. The written notice must state the evidence indicating the CONSULTANT'S abandonment.
- D. The CONSULTANT can only terminate this Agreement if the CITY fails to pay the CONSULTANT'S properly documented and submitted invoice within ninety (90) calendar days of the approval by the CITY'S Administrative Agent, or if the project is suspended by the CITY for a period greater than ninety (90) calendar days.
- E. The City Manager can terminate this Agreement if the CONSULTANT is placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the CONSULTANT, or an assignment is made for the benefit of creditors.

- F. In the event CONSULTANT breaches this Agreement, the CITY must provide written notice of the breach and CONSULTANT will have ten (10) days from the date the notice is received to cure. If CONSULTANT fails to cure within the ten (10) days, the City Manager may immediately terminate the Agreement and/or refuse to make any additional payment, in whole or in part, and if necessary, may demand the return of a portion or the entire amount previously paid to CONSULTANT due to:
1. The quality of a portion or all of the CONSULTANT'S work not being in accordance with the requirements of this Agreement;
 2. The quantity of the CONSULTANT'S work not being as represented in the CONSULTANT'S Payment Request, or otherwise;
 3. The CONSULTANT'S rate of progress being such that, in the CITY'S opinion, substantial or final completion, or both, may be inexcusably delayed;
 4. The CONSULTANT'S failure to use Agreement funds, previously paid the CONSULTANT by the CITY, to pay CONSULTANT'S project related obligations including, but not limited to, sub-consultants, laborers, or material and equipment suppliers;
 5. Claims made, or likely to be made, against the CITY or its property;
 6. Loss caused by the CONSULTANT; or
 7. The CONSULTANT'S failure or refusal to perform any of its obligations to the CITY.
- G. In the event that the CITY makes written demand upon the CONSULTANT for amounts previously paid by the CITY as contemplated herein, the CONSULTANT shall promptly comply with such demand. The CITY'S rights hereunder survive the term of this Agreement, and are not waived by final payment and/or acceptance.

10. INDEPENDENT CONTRACTOR

The CONSULTANT is and will be, in the performance of all work, services, and activities performed under this Agreement, an independent contractor, and not an employee, agent or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement are at all times, and in all places, subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT must exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the CITY is that of an independent contractor and not as employees or agents of the CITY. The CONSULTANT does not have the power or authority to bind the CITY in any promise, agreement, or representation other than as specifically provided for in this Agreement. The CONSULTANT must not pledge the CITY'S credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The CONSULTANT must not have any obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

11. NONDISCRIMINATION

The City of North Port, Florida, does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services. CONSULTANT must not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

12. ENTIRE AGREEMENT

This Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the parties, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. This Agreement supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.

13. AMENDMENT

No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any increase in the compensation to CONSULTANT the City Commission for the CITY and the duly authorized representative for CONSULTANT shall agree in writing to this change. For all other changes, except as provided herein, the City Manager or designee and CONSULTANT'S representative may agree to amendments that do not increase compensation to CONSULTANT. The City Manager or designee may agree to amendments that do not increase compensation to CONSULTANT. Only the City Commission can approve increases in compensation under this Agreement. For the sake of clarity, any separate agreement between CITY and an affiliate of CONSULTANT shall not in any way be deemed an amendment or modification of this Agreement.

14. ASSIGNMENT

The CONSULTANT must not assign any interest in this Agreement and must not transfer any interest in same (whether by assignment or novation) without prior written consent of the City Manager or designee, except that claims for the money due or to become due the CONSULTANT from the CITY under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the CITY. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the CITY.

15. WAIVER

The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

16. GOVERNING LAW, VENUE, AND SEVERABILITY

The rights, obligations, and remedies of the parties under this Agreement shall be governed by the laws of the State of Florida and the exclusive venue for any legal or judicial proceedings in

connection with the enforcement or interpretation of this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

17. AUTHORITY

The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.

18. NO HIRE

The CONSULTANT must not hire any CITY employee associated with this project throughout the duration of the Agreement and for a period of one (1) year after completion.

19. NOTICES

Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sent by certified mail, return receipt requested, or via a recognized national courier service in a manner that provides for written or electronic record of delivery, to the addresses listed below:

CONSULTANT'S REPRESENTATIVE:

James Glover
Managing Director
PFM Financial Advisors LLC
300 South Avenue, Suite 1170
Orlando, FL 32801
TEL (407) 406.5760
EMAIL: gloverj@pfm.com

CITY'S ADMINISTRATIVE AGENT:

Kimberly Ferrell
Finance Director
City of North Port,
4970 City Hall Boulevard
North Port, FL 34286
TEL (941) 429-7118
EMAIL: kferrell@cityofnorthport.com

WITH COPIES OF NOTICES PROVIDED TO:

City Attorney's Office
4970 City Hall Boulevard
North Port, FL 34286
northportcityattorney@cityofnorthport.com

20. PARAGRAPH HEADINGS

The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Agreement and do not affect its construction.

21. ATTORNEYS' FEES

In any proceedings between the parties arising out of or related to this Agreement, the prevailing party

shall be reimbursed all costs, expenses and reasonable attorney fees through all proceedings (at both trial and appellate levels).

22. SCRUTINIZED COMPANIES

- A. As required by Florida Statutes Section 287.135(5), for contracts of \$1,000,000.00 or less, the CONSULTANT shall certify on a form provide by the CITY, that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes, Section 215.4725, and that it is not engaged in a boycott of Israel.
- B. As required by Florida Statutes Section 287.135(5), for contracts of \$1,000,000.00 or more, the CONSULTANT shall certify on a form provided by the CITY, that all of the following are true:
 1. It is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes Section 215.4725, and that it is not engaged in a boycott of Israel; and
 2. It is not on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in Iran Petroleum Energy Sector list, created pursuant to Florida Statutes Section 215.473; and
 3. It is not engaged in business operations in Cuba or Syria.
- C. If the CONSULTANT provides a false certification or has been placed on one of the above-noted Lists of Scrutinized Companies, or has engaged in business operations in Cuba or Syria, the CONSULTANT will be in breach of this Agreement and the CITY may terminate the Agreement.
- D. Penalty:
 1. A consultant that has been found to have provided a false certification may be subject to a civil penalty equal to the greater of \$2 million or twice the amount of the Agreement, plus all reasonable attorney's fees and costs, including any costs for investigations that led to the finding of the false certification; and
 2. Shall be ineligible to bid on any contract with the CITY for three (3) years after the date the CITY determined that the consultant submitted a false certification.

23. REGISTERED MUNICIPAL ADVISOR; REQUIRED DISCLOSURES

- A. CONSULTANT is a registered municipal advisor with the Securities and Exchange Commission (the "SEC") and the Municipal Securities Rulemaking Board (the "MSRB"), pursuant to the Securities Exchange Act of 1934 Rule 15Ba1-2. If the CITY has designated CONSULTANT as its Independent Registered Municipal Advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption"), then services provided pursuant to such designation shall be the services described in the RFP and CONSULTANT'S Proposal. CONSULTANT is not responsible for, and has no liability in connection with, verifying that CONSULTANT is independent from any other party seeking to rely on the IRMA exemption (as such independent status is required pursuant to the IRMA exemption, as interpreted from time to time by the SEC). The CITY acknowledges and agrees that any reference to CONSULTANT, its personnel, and its role as IRMA, including in the written

representation of the CITY required under SEC Rule 15Ba1- 1(d)(3)(vi)(B), is subject to prior approval by CONSULTANT. The CITY further agrees not to represent that CONSULTANT is the CITY'S IRMA with respect to any aspect of a municipal securities issuance or municipal financial product, outside of the scope of services without CONSULTANT'S prior written consent.

- B. MSRB Rules require that municipal advisors make written disclosures to their clients of all material conflicts of interest, certain legal or disciplinary events and certain regulatory requirements. Such disclosures are provided in CONSULTANT'S Disclosure Statement delivered to the CITY prior to or together with this Agreement.

24. AFFILIATE SERVICES

Notwithstanding any other paragraph of this Agreement or exhibit attached to this Agreement, upon the request of the CITY, CONSULTANT or an affiliate of CONSULTANT may agree to additional services to be provided by CONSULTANT or an affiliate of CONSULTANT, which are outside the scope of work of this Agreement, by a separate agreement between the CITY and CONSULTANT or its respective affiliate in accordance with Section 31 of the RFP.

25. INFORMATION TO BE FURNISHED TO CONSULTANT

All information, data, reports, and records in the possession of CITY or any third party necessary for carrying out any services to be performed under this Agreement ("Data") shall be furnished to CONSULTANT. CONSULTANT may rely on the Data in connection with its provision of the services under this Agreement and the provider thereof shall remain solely responsible for the adequacy, accuracy or completeness of such Data.

IN WITNESS WHEREOF, the parties have executed the agreement as of the date first above written.

WITNESS:

Robert Wilson
Name: Robert Wilson

PFM FINANCIAL ADVISORS LLC

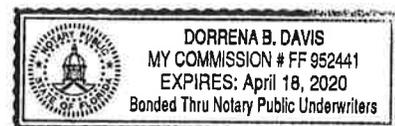
James W. Glover
Name: James W. Glover
Title: Managing Director

State of Florida
County of Orange

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 16th day of January 2020, by James W. Glover.

Dorrena B. Davis
Notary Public - State of Florida

Personally Known OR Produced Identification
Type of Identification Produced _____



CITY OF NORTH PORT, FLORIDA

Peter D. Lear, CPA, CGMA
City Manager

Attest

Heather Taylor, CMC
Interim City Clerk

Approved as to form and correctness

Amber L. Slayton
City Attorney

EXHIBIT A - SCOPE OF SERVICES

The scope of work is a general guide to the work the City expects to be performed by the Consultant and not a complete listing of all services that may be required or desired. Services provided must conform to all applicable State, Federal, and Local laws and administrative rules and regulations.

1. BACKGROUND/DESCRIPTION

The City by charter is required by referendum to go out for general obligation debt. The City is considering going out for a bond to fund various road and infrastructure improvement projects.

The City's most recent rating (April 7, 2017) Long-Term Issuer Default from FITCH Ratings was "AA" with a Rating Outlook of 'Stable'.

The Financial Advisor will assist the City in the analysis, structure, issuance and management of debt. The Financial Advisor may also be called upon to provide other financial advisory services. A detailed description of the scope of services is included below.

2. PROJECT REQUIREMENTS

The City issues its debt using a competitive sale and secured by its general obligation. The following is a listing of the services that the City expects to receive from its Financial Advisor.

- A. Assist the City in evaluating alternative mechanisms for financing capital improvements and/or economic development projects.
- B. Make recommendations to the City for structuring proposed debt issues in light of relevant factors, such as current indebtedness, available revenue support, anticipated market response and statutory constraints. The recommendations should include a discussion of the term of the debt, amortization schedule, amount of discount, call provision and credit enhancement.
- C. Prepare a calendar of events for the issuance of debt instruments.
- D. Assist in the preparation of the preliminary official statement, an official bid form and the final official statement.
- E. Prepare and publish an official notice of sale.
- F. Assist the City in developing and maintaining strategies that promote the best possible bond rating for the City. Traveling to the offices of Moody's Investors Service and Fitch Ratings to assist the City in rating presentations if necessary.
- G. Coordinate the debt issuance process with bond counsel and other Participants.
- H. Market the debt issue to solicit the maximum number of bids.

- I. Act as the agent of the City to accept telephone, electronic and written bids for each debt issue.
- J. Evaluate, verify and make recommendations to the City regarding acceptance or rejection of solicitations including being available to answer questions raised by City staff and the City Commission.
- K. Coordinate the steps required to close the debt issue and deliver funds to the City, including, where necessary, the printing of bonds, preparation of closing documents and selection of registrar/paying agent.
- L. Provide on-going debt planning and management assistance to the City including analysis of opportunities for refunding existing debt.
- M. Maintain separate accounting and billing for each debt issue.
- N. Assist the City with any rating surveillance calls.

EXHIBIT B – FEE SCHEDULE

| Title | Hourly Rate |
|----------------------------------|-------------------------------------|
| Managing Director/Director | \$195 per hour |
| Senior Managing Consultant | \$185 per hour |
| Senior Analyst/Analyst | \$175 per hour |
| | |
| Retainer | \$6000 annual or \$3000 semi-annual |
| Minimum fee per issue: | \$17,500 (\$15,000 w/retainer) |
| Up to \$20 Million, per bond | \$0.90/\$1,000 |
| From \$20-\$40 Million, per bond | \$0.70/\$1,000 |
| Over \$40 Million, per bond | \$0.50/\$1,000 |
| Maximum fee per issue | \$60,000 (\$50,000 w/retainer) |

A. Per Bond Fees for Transactions:

For all services related to the public offering or private placement of debt, Consultant will charge a "\$/\$1,000" fee schedule, per series, as shown in the table above. Negotiated and competitive transactions are billed at the same rate. Refunding issues will also be billed in accordance to the above schedule, with the exception of a \$2,500 additional fee for the extra services required for refunding. Expenses are to be billed at cost, not to exceed \$500 per series.

B. Other Services:

The above financial advisory compensation does not apply to services related to Consultant's other business entities that may be called upon from time-to-time, to include escrow structuring, arbitrage rebate, etc. If needed, these services would be performed by the appropriate entity of Consultant pursuant to a separately negotiated agreement. Other Consultant business units fully disclose all fees related to any transaction.