

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Finance

Council Meeting Date: 2/14/2013

Department Contact: Randy Taylor

Phone # 5062

Contract or Agreement: Financial Advisor Services - modification #1

Document Name: 20130214 FinAdvisor.doc

City Obligation Amount: approx. 20,000

Total Project Budget: n.a.

Uncommitted Account Balance: n.a.

Account Number: 01-6900-0511-4404

### Procurement Agreements

<b>Not Applicable</b>	<b>Not Applicable</b>
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### Grant-Funded Agreements

<b>Not Applicable</b>	<b>Grant Name:</b>
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Department	Signature	Date
1) Originating	<i>[Signature]</i>	2/11
2) Legal	<i>Mary Clates</i>	2/11/2013
3) Finance	<i>[Signature]</i>	2/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 2/14/2013

Action Requested By:  
Finance

Agenda Item Type  
Resolution

Subject Matter:

Financial Advisor contract

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into Modification No. 1 to Financial Advisor Agreement between the City of Huntsville and Public Financial Management, Inc.

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

This modification will add certain compliance and IRS rebate computation services to the PFM contract, services the City cannot efficiently perform internally any longer.

Associated Cost: 20,000

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: \_\_\_\_\_

Date: 2/14

RESOLUTION NO. 13 - \_\_\_\_\_

**BE IT RESOLVED**, that the City Council of the City of Huntsville, Alabama, that the Mayor be hereby authorized to enter into Modification No. 1 to Financial Advisor Agreement by and between the City of Huntsville, and Public Financial Management, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, as previously adopted and approved by Resolution No. 12-594 on July 13, 2012, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Modification No. 1 to Financial Advisor Agreement between the City of Huntsville and PUBLIC FINANCIAL MANAGEMENT, Inc.," consisting of eleven (11) pages, and the date of February 14, 2013, appearing on the of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the 14th day of February, 2013.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 14th day of February, 2013.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

**MODIFICATION NO. 1 TO THE  
FINANCIAL ADVISOR AGREEMENT  
BETWEEN THE CITY OF HUNTSVILLE AND  
PUBLIC FINANCIAL MANAGEMENT, INC.  
AS ADOPTED AND APPROVED BY RESOLUTION  
No.12-594 on July 13, 2012**

Pursuant to Article X of the Financial Advisor Agreement dated July 12, 2012 ("Agreement"), between the City of Huntsville, Alabama ("City") and Public Financial Management, Inc. ("Financial Advisor"), the City and Financial Advisor enter into this Modification No. 1 to the Agreement, replacing the entirety of the Agreement with the following:

**WITNESSETH**

**WHEREAS**, the City requires the professional services of Financial Advisor, and

**WHEREAS**, the City has determined that Financial Advisor possesses the experience and expertise necessary to perform the services required by the City.

**NOW, THEREFORE**, the parties hereto agree as follows:

**ARTICLE I**

**TERM:**

This Agreement shall be effective April 1, 2012 and shall terminate on September 30, 2012. This Agreement shall be automatically extended for up to two (2) consecutive one (1) year terms unless the City notifies Financial Advisor at least ninety (90) days prior to its termination date of its intention to not extend this Agreement. Provided, however, that the City may terminate this Agreement at any time pursuant to the provisions of Article IV.

**ARTICLE II**

**SCOPE:**

See attached Exhibit A for scope of services.

**ARTICLE III**

**COMPENSATION:**

See attached Exhibit B for compensation schedule for services.

**ARTICLE IV**

**TERMINATION:**

The City may, at any time and without cause, cancel this Agreement by serving ninety (90) days written notice to Financial Advisor of its intent to cancel. In the event of such cancellation,

Agreement between the City of Huntsville and  
PFM, Inc. by Resolution No. 13 - \_\_\_\_\_ adopted  
and approved on February 14, 2013.

the City's only obligation to Financial Advisor shall be payment for services rendered prior to the effective date of the cancellation. All information and work product developed by Financial Advisor shall be turned over to and deemed the property of the City.

#### ARTICLE V

##### NON-ASSIGNMENT:

Financial Advisor shall not assign its rights and duties to this Agreement, in whole or in part, without the prior written approval of the City. Approval may be withheld at the sole discretion of the City. This Agreement shall be binding on any and all successors and assigns to this Agreement.

#### ARTICLE VI

##### COMPLIANCE WITH ALL LAWS:

Financial Advisor shall comply with all federal, state and local laws, rules, regulations, and standards without limitation to those designated within this Agreement. The laws and regulations of the State of Alabama shall govern the rights of the parties, the performance of this Agreement and any disputes hereunder. Any action relating to this Agreement shall be brought in an Alabama court.

#### ARTICLE VII

##### NON-DISCRIMINATION:

Financial Advisor will not discriminate against any employee of the City, or any individual associated with the City because of race, age, creed, color, religion, sex, physical handicap, or national origin in the course of carrying out the duties pursuant to this Agreement.

#### ARTICLE VIII

##### INDEMNIFICATION:

Financial Advisor shall indemnify, defend and hold harmless the City, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature arising out of this contract which are attributed to any act or omission of Financial Advisor, its agents, employees or anyone acting under its direction, control or on its behalf, whether intentional or negligent.

#### ARTICLE IX

##### NON-WAIVER:

The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

ARTICLE X

ENTIRE AGREEMENT:

This Agreement, together with the referenced documents and Appendixes hereto, constitutes the entire Agreement between the parties, and this Agreement shall not be modified, amended, altered or changed except in writing and by mutual consent of the parties hereto.

ARTICLE XI

NON-APPROPRIATION OF FUNDS:

This agreement may be canceled at the end of each fiscal year (September 30<sup>th</sup>) if for any reason the City does not appropriate funds for the stated purpose of maintaining this agreement. In the event of such cancellation, City shall have no further obligation to Financial Advisor other than for services already provided.

ARTICLE XII

INDEPENDENT CONTRACTORS:

The status of Financial Advisor shall be that of an independent contractor and Financial Advisor shall not be considered an employee of the City and shall not be entitled to receive any benefits associated with regular employment. Financial Advisor shall be responsible for payment of all federal state and local taxes associated with compensation received pursuant to this Agreement. Financial Advisor shall be responsible for program development and operation without supervision of the City.

ARTICLE XIII

INSURANCE:

Evidence of insurance is required of Financial Advisor as follows: Commercial General Liability in the amount of \$1,000,000.00 combined, single limit Bodily Injury and Property Damage or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage. The Commercial General Liability Insurance is to include coverage for contractual liability. The City is to be named as an additional insured for all operations performed within the scope of the contract between the City and Financial Advisor.

IN WITNESS HEREOF, the parties have, by their respective signatures caused this document to be executed this 14th day of February, 2013.

The City of Huntsville, Alabama

Public Financial  
Management, Inc.

By: \_\_\_\_\_  
Tommy Battle, Mayor

By: \_\_\_\_\_  
Its \_\_\_\_\_

Attest: \_\_\_\_\_  
Charles E. Hagood  
City Clerk/Treasurer

Attest: \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT A**  
**FINANCIAL ADVISOR AGREEMENT**  
**SCOPE OF SERVICES**

**A. General Duties**

1. Financial Advisor shall provide advisory services as requested on the general financial operation of the City including, but not limited to the following:
  - a. Capital Planning
  - b. Budget Analysis
  - c. Debt Capacity Analysis
  - d. Valuation Studies
  - e. SEC Continuing Disclosure Compliance
  - f. Economic Development Incentive Proposals
  - g. Review of any City-related Boards and/or Authorities as requested by the Finance Director.
2. Financial Advisor shall attend all meetings of the City to which Financial Advisor has been requested to attend and shall respond to questions posed by the City regarding financing proposals, economic and community development activities, and other related matters. Financial Advisor shall provide information to the City on current trends in municipal finance and shall provide research to the City as requested.
3. Financial Advisor shall provide ongoing contact with the credit rating agencies, bond insurers, and other entities interested in the financial operations of the City.
4. Financial Advisor shall analyze any new financing programs and techniques which may be presented to the City and when requested shall report its findings on the feasibility, benefits, and other attributes of such proposals and techniques to the City.
5. Financial Advisor shall assist the City in evaluating and obtaining short-term financing options including municipal leasing transactions and bond-anticipation note transactions.

**B. Financial Advisor Services in connection with the Issuance of Debt.**

1. Financial Advisor shall provide such services as are necessary to assist in the structuring, pricing, and issuance of the long-term debt of the City. Included herein will be such analytical work as may be necessary to analyze the efficiency of such transactions.
2. Financial Advisor will coordinate rating agency presentations.
3. Financial Advisor will assist in obtaining and evaluating credit enhancement options.

4. Financial Advisor will assist in the evaluation of Underwriters.
  5. Financial Advisor will assist and/or conduct a Public Sale, i.e. competitive bidding process, on behalf of the City when instructed to do so by the City.
- C. Other Services. At the option of the City, Financial Advisor will perform such other duties and functions and undertake such projects as may be consistent with the role of Financial Advisor when requested by the Mayor or the Finance Director on behalf of the City.
- D. Arbitrage Rebate Compliance Services. Financial Advisor will provide those services described in Exhibit C to Agreement.
- E. Post-Issuance Compliance Services. Financial Advisor will provide those services described in Exhibit D to Agreement.

**EXHIBIT B**  
**FINANCIAL ADVISOR AGREEMENT**  
**COMPENSATION AND FEES**

A. Reimbursable Costs. There will be no charge for normal internal expenses typically incurred in the delivery of financial consulting services including computer time, normal supplies, telephone, and regular postage. Necessary travel and lodging expenses will be reimbursable, at cost, with the prior consent of the City. Expenses related to specific financing transactions, such as official statement printing, bond printing, rating fees, and rating presentation materials will also be reimbursable at cost. All such expenses will be incurred only at the direction of the City.

B. Fee Structure

1. Retainer. Financial Advisor will receive a retainer of \$43,200 per year, payable quarterly, commencing April 1, 2012 for all services provided under the Scope of Services, whether related to a debt financing or not.
2. Transaction Fee. An additional fee will be charged by the Financial Advisor to the City at the time of any financing transaction that has a maturity in excess of 2 years and a par amount in excess of \$10,000,000. The additional fee will be in a range of .08% to .175% based upon the size and complexity of the transaction.
3. Special Purpose Financing Authorities. Any work done pursuant to Section A.1.g. in the Scope of Services on behalf of the City related to the establishment, review, or monitoring of any special purpose authorities established by the City, including, but not limited to, Public Education Building Authorities, Health Care Finance Authorities and other similar entities, will be billed at the firms' customary hourly rates and will be paid by the issuer, not the City.
4. Arbitrage Rebate Compliance Services. Fees for these services will be as specified in Exhibit C to Agreement.
5. Post-Issuance Compliance Services. Fees for these services will be as specified in Exhibit D to Agreement.

**EXHIBIT C**  
**FINANCIAL ADVISOR AGREEMENT**  
**ARBITRAGE REBATE COMPLIANCE SERVICES**

- A. Financial Advisor, through its investment advisory affiliate PFM Asset Management LLC, will perform for City the calculations relating to the rebate requirements contained in Section 148(f) of the Internal Revenue Code of 1986 (the "Code"). The calculations are to be performed with respect to the following debt obligations (the "Bonds"), applying applicable federal tax rules:
- a. General Obligation Capital Improvement and Refunding Warrants, Series 2009-A
  - b. General Obligation Capital Improvement Warrants (Build America Bonds), Series 2010-B
  - c. General Obligation Capital Improvement and Refunding Warrants, Series 2011-A
  - d. General Obligation School Capital Improvement Warrants, Series 2011-B
  - e. General Obligation Refunding and Capital Improvement Warrants, Series 2012-A
- B. Financial Advisor will calculate the amount of rebate liability with respect to the Bonds as of the end of each bond year (or other appropriate period) and as of the final maturity or redemption of the Bonds (each such date herein referred to as a "Calculation Date") applying regulations of the United States Department of the Treasury in effect on such Calculation Date. Financial Advisor will provide the following services: (i) calculation of the amount of rebate liability with respect to the Bonds as of each Calculation Date, and (ii) delivery of schedules reflecting such rebate liability calculation and the assumptions involved.
- C. The City undertakes to provide or cause to be provided to Financial Advisor all relevant data, as requested from time to time, with respect to each Calculation Date within 15 days after such date and the City agrees to cooperate with all reasonable requests in connection herewith. This information will be necessary to identify the amount of "gross proceeds" (as that term is used in the Code) of the Bonds subject to the rebate requirement, investment income thereon and applicable yields on the Bonds and on such investments in order to calculate the rebate liability of the City with respect to the Bonds as of the Calculation Date. Financial Advisor is not being engaged to duplicate work performed by the prior Rebate Calculation Agent including the City's internally prepared calculations, if any, to independently determine whether there were "prohibited payments" or "imputed receipts" within the meaning of Treasury Regulations

or to perform an audit or review of the investments acquired with gross proceeds or the payment of debt service on the Bonds, and Financial Advisor will be entitled to rely entirely on information provided by the City without independent verification. Financial Advisor is also not being engaged to audit or review the tax exempt status of interest on the Bonds or any other aspect of the Bond program except for the rebate liability to the extent set forth in this engagement letter, and Financial Advisor shall be under no obligation to consider any information obtained by Financial Advisor pursuant to this engagement for any purpose other than determining such rebate liability. Financial Advisor shall not have any obligation to update any report delivered hereunder because of events occurring, changes in regulations, or data or information received, subsequent to the date of delivery of such report.

D. The fees payable to Financial Advisor for the services described in this Exhibit C are as follows:

**BASE FEE**

<u>Service</u>	<i>Fee</i>
Engagement Fee (one-time fee, per issue)	Waived
Report Fee (per report) (including yield restriction analysis, if required)	
First 5 reports	\$2,000
Reports 6-10	\$1,750
Over 10 reports	\$1,450

**ADDITIONAL FEES**

*Per report, as appropriate*

<u>Service</u>	
8038-T, if required	+\$300
Variable Rate Issue	+\$300
Transferred Proceeds Analysis	+\$750
Computation Periods in Excess of 12 Months (per additional year or fraction thereof)	+\$900
Preparation of Late Payment Explanation, if necessary (in such cases where the Issuer is filing late and a late payment explanation is required.)	+\$300

The above fees are subject to adjustment based on changes in the Consumer Price Index- all urban consumers, with a base period of December 2013.

Calculation Date fees are due upon delivery of each calculation.

- E. Financial Advisor may rely upon the advice of counsel, who may be counsel to the City, and upon statements of accountants, brokers and other persons believed by it in good faith to be experts in the matters upon which they are consulted.
- F. Additional Bonds may be added, from time to time, by written notice from the City to Financial Advisor, and the fee schedule described herein B shall apply unless other fees are agreed to in writing.

**EXHIBIT D**  
**FINANCIAL ADVISOR AGREEMENT**  
**POST-ISSUANCE COMPLIANCE SERVICES**

- A. Financial Advisor, through its investment advisory affiliate PFM Asset Management LLC, will to assist the City with the development of written post-issuance compliance procedures, as follows:
- (1) Meet with representatives of the City.
  - (2) Discuss the City's current procedures, and any areas of concern.
  - (3) Collect any existing written policies and procedures.
  - (4) Agree on the timing of deliverables.
  - (5) Develop, expand or document, as necessary, a post-issuance compliance procedures document that addresses the following topics:
    - a. Individuals responsible for managing and implementing the City's post-issuance compliance program
    - b. Training and education
    - c. Use of bond proceeds
    - d. Accounting for bond proceeds
    - e. Investment of bond proceeds
    - f. Qualified guarantees and qualified hedges
    - g. Arbitrage rebate and yield restriction compliance
    - h. Private business use
    - i. Record retention
    - j. Other miscellaneous compliance procedures
    - k. Continuing disclosure
  - (6) Schedule subsequent conference call meetings to discuss comments and revisions to the procedures document.
  - (7) Deliver final written procedures to the City.

- (8) Be available to provide additional consultation services as needed, including the modification of the written procedures.
  - (9) Schedule subsequent conference call meetings to discuss comments and revisions to the procedures document.
  - (10) Deliver final written procedures to the City.
  - (11) Be available to provide additional consultation services as needed, including the modification of the written procedures.
- B. The fees payable to Financial Advisor for the services described in this Exhibit D are as follows:

<u>Service</u>	<i>Fee</i>
Review the current state of policies, procedures and processes (steps 1 through 4 above).	\$7,500
Prepare customized written post-issuance compliance procedures for the City or to augment the existing procedures.	\$7,500
Additional consultation services, including adjustments and revisions to the written procedures, for a period of one year after completion of above services.	\$0
Additional consultation services after one year will be mutually agreed by City and Financial Advisor.	
Out of pocket costs for travel and maintenance in addition to the above fees.	Actual cost