

CITY OF FRANKLIN, TENNESSEE
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("AGREEMENT") is by and between the City of Franklin, Tennessee, hereinafter referenced as CLIENT, and Public Financial Management, Inc. hereinafter referenced as CONSULTANTS or PFM, who mutually agree as follows:

DECLARATIONS. CLIENT desires to retain CONSULTANTS to develop and assist in implementing the City's strategies to meet its current and long-term operations and capital financing needs and render assistance in respect to planning and debt transactions for the City of Franklin, Tennessee hereinafter referenced as PROJECT. The PROJECT is described as follows:

Financial Advisory Services for the City of Franklin, TN

1. CONSULTANT shall provide financial planning services and related financial analysis services for the PROJECT in accordance with the SCOPE OF SERVICES. The SCOPE OF SERVICES as found in Attachment A shall be considered as an integral part hereof.
2. CONSULTANT has attached a FEE SCHEDULE for the PROJECT based on the detailed SCOPE OF SERVICES, which is incorporated into Attachment A. The FEE SCHEDULE shall be considered as an integral part hereof.
3. CONSULTANTS agree to be bound by the provisions set forth in Attachment A so long as the provisions are not in conflict with this AGREEMENT.
4. In event of a conflict between this AGREEMENT and the attached document(s), this AGREEMENT shall supersede conflicting terms and conditions.

EXECUTED THIS 21st DAY OF May, 2009.

BY: Elise J Daniel
CONSULTANT'S SIGNATURE
TITLE: MANAGING DIRECTOR

BY: [Signature]
CITY OFFICIAL
TITLE: _____

Approved as to form
by City Attorney's Office on
2/18/09
Initials: SRB

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

ARTICLE 1. SERVICES. CONSULTANT will:

- 1.1 Act for CLIENT in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with standards of competent consultants using the highest standards in the industry.
- 1.2 Consider all reports to be confidential and distribute copies of the same only to those persons specifically designated by the CLIENT.
- 1.3 Retain pertinent records relating to the services performed for a period of seven (7) years following the completion of the work; during this period the records shall be available for review by CLIENT at all reasonable times.

ARTICLE 2. CLIENT'S RESPONSIBILITIES. CLIENT, or his authorized representative, will:

- 2.1 Provide CONSULTANT with all information regarding the PROJECT, which is available to, or reasonably obtainable by, the CLIENT.
- 2.2 Designate, in writing, the sole PROJECT representative to coordinate with and direct the CONSULTANT, including all contact information.
- 2.3 Guarantee to CONSULTANT that it has the legal capacity to enter into this contract and that sufficient monies are available to fund CONSULTANT's compensation.

ARTICLE 3. GENERAL CONDITIONS.

- 3.1 CONSULTANT, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities customarily vested in other professionals or agencies participating in the PROJECT.
- 3.2 CONSULTANT shall not be responsible for the acts or omissions of any party involved in concurrent or subsequent phases of the PROJECT acting upon written instruction issued by the CONSULTANT.
- 3.3 Either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof may terminate this AGREEMENT. In the event of termination, the CONSULTANT shall be paid for services performed to the termination notice date.
- 3.4 Neither CLIENT nor CONSULTANT may assign or transfer its duties or interest in this AGREEMENT without written consent of the other party. However, nothing in this ARTICLE shall prevent CONSULTANT from engaging independent consultants, associates, and subcontractors to assist in the performance of the SERVICES at CONSULTANT's cost.
- 3.5 ALLOCATION OF RISK AND LIABILITY; GENERAL. Considering the potential liabilities that may exist during the performance of the services of this AGREEMENT, the relative benefits and risks of the PROJECT, and the CONSULTANT's fee for the services rendered, and in consideration of the promises contained in this AGREEMENT, the CLIENT and the

CONSULTANT agree to allocate and limit such liabilities in accordance with this paragraph.

- 3.6 INDEMNIFICATION. CONSULTANT agrees to indemnify and hold CLIENT harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by Consultant's negligent act, error or omission in the performance of the services of this AGREEMENT. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of CONSULTANT and CLIENT, they shall be borne by each party in proportion to its own negligence.

3.6.1 SURVIVAL. The terms and conditions of this paragraph shall survive completion of this services agreement.

ARTICLE 4. SCOPE OF SERVICES.

- 4.1 CONSULTANT shall provide the SERVICES as described in Attachment A.
- 4.2 By mutual agreement, this contract and scope can be amended by the parties. The scope and fee for any additional tasks or services under such amendment shall be mutually negotiated and agreed to in writing prior to beginning such additional tasks or services.

ARTICLE 5. SCHEDULE.

- 5.1 TIME OF THE ESSENCE. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.
- 5.2 FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 5.3 Should CLIENT request changes in the scope, extent, or character of the PROJECT, the time of performance of CONSULTANT's services as indicated in Attachment A shall be adjusted equitably.

ARTICLE 6. USE OF DOCUMENTS, DATA.

- 6.1 All Documents, including, but not limited to, reports, drawings, specifications, and computer software prepared by CONSULTANT pursuant

to this AGREEMENT are instruments of service in respect to the PROJECT. CONSULTANT shall retain an ownership and property interest therein (including the right of reuse at the discretion of the CONSULTANT) whether or not the PROJECT is completed.

6.1.1 USE OF DATA SYSTEMS: Ownership, property interests and proprietary rights in data systems used by CONSULTANT do not extend to the data created by or supplied to CONSULTANT by the CLIENT; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in CLIENT at the moment of creation.

6.1.2 DISCLOSURE OF DOCUMENTS/DATA. CLIENT may be required to disclose documents or data under state or federal law. CLIENT shall notify CONSULTANT if a request for data or documents has been made and shall give CONSULTANT a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. CONSULTANT waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page as confidential or proprietary. In exchange, CONSULTANT agrees to indemnify, defend, and hold harmless CLIENT for any claims by third parties relating thereto or arising out of (i) the CLIENT's failure to disclose such documents or information required to be disclosed by law, or (ii) the CLIENT's release of documents as a result of CLIENT's reliance upon CONSULTANT representation that materials supplied by CONSULTANT (in full or redacted form) do not contain trade secrets or proprietary information, provided that the CLIENT impleads CONSULTANT and CONSULTANT assumes control over that claim.

6.2 CLIENT-furnished data that may be relied upon by CONSULTANT is limited to the printed copies that are delivered to the CONSULTANT pursuant to ARTICLE 2 of this AGREEMENT. Any copyrighted electronic files furnished by CLIENT shall be used by CONSULTANT only for the PROJECT as described herein. CLIENT's posting or publication of such documents created by CONSULTANT for CLIENT shall constitute fair use and shall not constitute an infringement of CONSULTANT's copyright, if any.

6.3 Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the CONSULTANT. Files in electronic media format of text, data, graphics, or of other types that are furnished by CONSULTANT to CLIENT are only for convenience of CLIENT, unless the delivery of the PROJECT in electronic media format has been dictated in Attachment A, SCOPE OF SERVICES. Any conclusion or information obtained or derived from electronic files provided for convenience will be at the user's sole risk.

6.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or

procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Unless stated otherwise herein, CONSULTANT shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.

- 6.5 When transferring documents in electronic media format, CONSULTANT makes no representations as to long term compatibility, usability, or readability, of documents resulting from the use of software application packages, operating systems, or computer hardware differing from that as required of, and used by, CONSULTANT at the beginning of this PROJECT.
- 6.6 CLIENT may make and retain copies of Documents for information and reference in connection with use on the PROJECT by the CLIENT, or his authorized representative. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the PROJECT or on any other project. Any such reuse or modifications without written verification or adaptation by CONSULTANT, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to the CONSULTANT or to CONSULTANT's Consultants.
- 6.7 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 6.8 Any verification or adaptation of the Documents for extensions of the PROJECT or for any other project will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

ARTICLE 7. INSURANCE.

- 7.1 During the performance of the SERVICES under this AGREEMENT, CONSULTANT shall maintain the following minimum insurance:
 - a) General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - b) Automobile Liability Insurance with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
 - c) Workers' Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with a limit of \$500,000 for each occurrence.
 - d) Professional Liability Insurance with a limit of \$1,000,000 annual aggregate.
- 7.2 CONSULTANT shall upon written request furnish CLIENT certificates of insurance, which shall include a provision that such insurance shall not be canceled without at least thirty (30) days' written notice to CLIENT.
- 7.3 No insurance, of whatever kind or type is to be considered as in any way limiting other parties' responsibility for damages resulting from their activities in the execution of the PROJECT. CLIENT agrees to include, or cause to be included, in the PROJECT's construction contract, such requirements for insurance coverage and performance bonds by the PROJECT's construction contractor as CLIENT deems adequate to indemnify CLIENT, CONSULTANT, and other concerned parties against claims for

damages and to insure compliance of work performance and materials with PROJECT requirements.

ARTICLE 8. PAYMENT.

- 8.1 CLIENT will pay CONSULTANT for services and expenses in accordance with the FEE STRUCTURE proposed for the PROJECT as shown in Attachment A. CONSULTANT's invoices will be presented at the completion of the work or monthly and will be payable upon receipt. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. CLIENT shall give prompt written notice of any disputed amount and shall pay the remaining amount.
- 8.2 CONSULTANT shall be paid in full for all services under this AGREEMENT, including CLIENT-authorized overruns of the PROJECT budget or unforeseen need for CONSULTANT's services exceeding the original SCOPE OF SERVICES.
- 8.3 NO TAXES, NO INTEREST PAYMENTS.
As a tax-exempt entity, the CLIENT shall not be responsible for sales or use taxes incurred for products or services. The CLIENT shall supply CONSULTANT with its Sales and Use Tax Exemption Certificate upon CONSULTANT's request. CONSULTANT shall bear the burden of providing its suppliers with a copy of the CLIENT's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred. The CLIENT does not agree to pay any interest for late payments, having agreed to pay in a timely manner.
- 8.4 TRAVEL; EXPENSES
The CLIENT shall reimburse reasonable expenses, including travel and meals, when specified in the Scope of Work, but only in accordance with the CLIENT'S Travel and Expense Policy and Procedures Manual and in accordance with Attachment A. The maximum amount will be applied as of the date of travel and as listed in the per diem reimbursement rates on the "CONUS" website developed by the United States General Services Administration, located at www.gsa.gov [click on 'per diem rates' under the 'etools' category].

ARTICLE 9. EXTENT OF AGREEMENT:

- 9.1 APPLICABLE LAW/CHOICE OF FORUM AND VENUE. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. Any provision of this AGREEMENT held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 9.2 ENTIRE AGREEMENT. This AGREEMENT, including these terms and conditions, represent the entire AGREEMENT between CLIENT and CONSULTANT for this PROJECT and supersedes all prior negotiations, representations or agreements, written or oral. This AGREEMENT may be amended only by written instrument signed by CLIENT and CONSULTANT.

- 9.3 PARTIES; NO THIRD PARTY RIGHTS CREATED. CLIENT and CONSULTANT each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this AGREEMENT and to their successors, executors administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this AGREEMENT. The SERVICES provided for in this AGREEMENT are for the sole use and benefit of CLIENT and CONSULTANT. Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than the CLIENT and the CONSULTANT.
- 9.4 WARRANTIES/LIMITATION OF LIABILITY/WAIVER. The CLIENT reserves all rights afforded to local governments under law for all general and implied warranties. The CLIENT does not waive any rights it may have to all remedies provided by law and therefore any attempt by CONSULTANT to limit its liability shall be void and unenforceable.

ARTICLE 10. DISPUTE RESOLUTION, BREACH, SURVIVAL.

- 10.1 If a dispute should arise relating to the performance of or payment for the services under this AGREEMENT, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. No arbitration or mediation shall be required as a condition precedent to filing any legal claim arising out of or relating to the AGREEMENT. No arbitration or mediation shall be binding.
- 10.2 BREACH. Upon deliberate breach of the AGREEMENT by either party, the non-breaching party shall be entitled to terminate the AGREEMENT with notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

ARTICLE 11. SURVIVAL.

The provisions contained in this PROFESSIONAL SERVICES AGREEMENT shall survive the completion of or any termination of the AGREEMENT, agreement or other document to which it may accompany or incorporate by reference or which subsequently may be modified, unless expressly excepted from this Article upon consent of both parties.

Attachment A

**SCOPE OF SERVICES FOR
FINANCIAL ADVISORY SERVICES
FOR THE CITY OF FRANKLIN, TN**

I. SCOPE OF SERVICES

PFM shall provide, upon request of the City, services related to financial planning and policy development and services related to debt issuance, examples of which, not intended to be exclusive, are set forth in Exhibit A to this Agreement.

II. WORK SCHEDULE

The services of the Financial Advisor are to commence as soon as practicable after the execution of this Agreement and a request by the City for such service.

Services which are not related to a particular transaction shall be completed as agreed between the City and the Financial Advisor.

III. FINANCIAL ADVISORY COMPENSATION

For the services described, PFM's professional fees and expenses shall be paid as follows:

1. For services related to financial planning, policy development and financial analysis, PFM shall receive hourly rates as listed below. Fees for support staff are included in the hourly rates for professionals. Services will be billed no more frequently than monthly.

Experience Level Hourly Rate

Managing Director	\$300.00
Senior Managing Consultant	\$250.00
Consultant	\$200.00
Associate	\$150.00

2. For services related to the issuance of Bonds, PFM will be paid a fee to be agreed upon between the City and PFM in connection with the circumstances of each transaction.

3. For fees as to Special Services described in Exhibit A, PFM shall negotiate in advance a not-to-exceed amount and other mutually agreeable terms.

Reimbursable Expenses

In addition to fees for services, PFM will be reimbursed for necessary, reasonable, and documented out-of-pocket expenses incurred, including travel, meals, lodging telephone, mail, and other ordinary cost and any actual extraordinary cost for graphics, printing, data processing and computer time which are incurred by PFM. Appropriate documentation will be provided.

IV. TERMS AND TERMINATION

This agreement shall remain in effect unless canceled in writing by either party upon thirty (30) days written notice to the other party.

V. NON-ASSIGNABILITY

PFM shall not assign any interest in this Agreement or subcontract any of the work performed under the Agreement without the prior written consent of the City.

VI. INFORMATION TO BE FURNISHED TO THE FINANCIAL ADVISOR

All information, data, reports, and records in the possession of the City necessary for carrying out the work to be performed under this Agreement shall be furnished to the Financial Advisor and the City shall cooperate with the Financial Advisor in all reasonable ways.

VI. NOTICES

All notices given under this Agreement shall be in writing, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the designated below. The parties designate the following as the respective places for giving notice, to-wit:

City of Franklin, TN
109 Third Avenue South
Franklin, TN 37064
Attention: Mr. Russ Truell

PUBLIC FINANCIAL MANAGEMENT, INC.
530 Oak Court Drive
Suite 160
Memphis, TN 38117
Attention: Ms. Lisa Daniel

VII. TITLE TRANSFER

All materials prepared by PFM pursuant exclusively to this Agreement shall be the property of the City. Upon termination of this Agreement, Financial Advisor shall deliver to the City copies of any and all material pertaining to this Agreement.

VIII. FINANCIAL ADVISOR'S REPRESENTATIVES

The City has the right for any reason to request PFM to replace any member of the advisory staff. Should the City make such a request, PFM shall promptly suggest a substitute for approval by the City.

IX. INDEPENDENT CONTRACTOR

The Financial Advisor, its employees, officers and representatives at all times shall be independent contractors and shall not be deemed to be employees, agents, partners, servants and/or joint venturers of the City by virtue of this Agreement or any actions or services rendered under this Agreement.

X. ADDITIONAL SERVICES

The City may require additional financial services such as arbitrage rebate services, investment of bond proceeds, purchase of investment contracts, and purchase of SWAPS contracts, among others. Such services will be provided by PFM's affiliate PFM Asset Management LLC pursuant to a separate memorandum agreement upon mutually satisfactory terms.

EXHIBIT A

1. Services related to the Financial Planning and Policy Development upon request of the City:

- Assist the City in the formulation of Financial and Debt Policies and Administrative Procedures.
- Review current debt structure, identifying strengths and weaknesses of structure so that future debt issues can be designed to maximize ability to finance future capital needs. This will include, but not be limited to, reviewing existing debt for the possibility of refunding that debt to provide the City with savings.
- Analyze future debt capacity to determine the City's ability to raise future debt capital.
- Assist the City in the development of the City's Capital Improvement program by identifying sources of capital funding for infrastructure needs.
- Assist the City with the development of the City's Financial Plan by assessing capital needs, identifying potential revenue sources, analyze financing alternatives such as pay-as-you-go, lease/purchasing, short-term vs. longterm financings, assessments, user fees, impact fees, developer contributions, public/private projects, and grants and provide analysis of each alternative as required as to the budgetary and financial impact.
- Review the reports of accountants, independent engineers and other project feasibility consultants to ensure that such studies adequately address technical, economic, and financial risk factors affecting the marketability of any proposed revenue debt issues; provide bond market assumptions necessary for financial projections included in these studies; attend all relevant working sessions regarding the preparations, review and completion of such independent studies; and provide written comments and recommendations regarding assumptions, analytic methods, and conclusions contained therein.

- Develop, manage and maintain computer models for longterm capital planning which provide for inputs regarding levels of ad valorem and non-ad valorem taxation, growth rates by operating revenue and expenditure item, timing, magnitude and cost of debt issuance, and project operating and capital balances, selected operating and debt ratios and other financial performance measures as may be determined by the City.
- Provide debt services schedules reflecting varying interest rates, issue sizes, and maturity structures as these are needed for feasibility consultants or for related City fiscal planning.
- Attend meetings with the City's staff, consultants and other professionals and the City.
- Review underwriter's proposals and submit a written analysis of same to the City.
- Undertake any and all other financial planning and policy development assignments made by the City regarding bond and other financings, and financial policy including budget, tax, cash management issues and related fiscal policy and programs.
- Assist the City in preparing financial presentations for public hearings and/ or referendums.
- Provide special financial services as requested by the City.

2. Services Related to Debt Transactions (Includes short term financings, notes, loans, letters of credit, line of credit and bonds). Upon the request of the City:

- Analyze financial and economic factors to determine if the issuance of bonds is appropriate.
- Develop a financing plan in concert with the City's staff which would include recommendations as to the timing and number of series of bonds to be issued.
- Assist the City by recommending the best method of sale, either as a negotiated sale, private placement or a public sale. In a public sale, make recommendation as to the determination of the best bid. In the event of a negotiated sale, assist in the solicitation, review and

evaluation of any investment banking proposals, and provide advice and information necessary to aid in such selection.

- Advise as to the various financing alternatives available to the City.
- Develop alternatives related to debt transaction including evaluation of revenues available, maturity schedule and cash flow requirements.
- Evaluate benefits of bond insurance and/or security insurance for debt reserve fund.
- If appropriate, develop credit rating presentation and coordinate with the City the overall presentation to rating agencies.
- Assist the City in the procurement of other services relating to debt issuance such as printing, paying agent, registrar, etc.
- Identify key bond covenant features and advise as to the financial consequences of provisions to be included in bond resolutions regarding security, creation of reserve funds, flow of funds, redemption provisions, additional parity debt tests, etc.; review and comment on successive drafts of bond resolutions.
- Review the requirements and submit analysis to bond insurers, rating agencies and other professionals as they pertain to the City's obligation.
- Review the terms, conditions and structure of any proposed debt offering undertaken by the City and provide suggestions, modifications and enhancements where appropriate and necessary to reflect the constraints or current financial policy and fiscal capability.
- Coordinate with the City's staff and other advisors as respects the furnishing of data for offering documents, it being specifically understood that Financial Advisor is not responsible for the inclusion or omission of any material in published offering documents.

- Provide regular updates of tax-exempt bond market conditions and advise the City as to the most advantageous timing for issuing its debt.
- Advise the City on the condition of the bond market at the time of sale, including volume, timing considerations, competing offerings, and general economic considerations.
- Assist and advise the City in negotiations with investment banking groups regarding fees, pricing of the bonds and final terms of any security offering, and make in writing definitive recommendations regarding a proposed offering to obtain the most favorable financial terms based on existing market conditions.
- Arrange for the closing of the transaction including, but not limited, to bond printing, signing and final delivery of the bonds.

If the transaction is competitive, the services of the financial advisor will be modified to reflect that process.

3. Special Services. Upon request of the City:

PFM may provide other services which shall include, but not be limited to, the following:

1. Impact fee financial analysis
2. Rate analysis
3. Management analysis
4. Referendum assistance
5. Legislative initiatives
6. Project assessment analysis
7. Implementation of revenue enhancement programs
8. Financial analysis of projects being developed by engineer/ architect studies
9. Negotiate on behalf of the City for proposed projects
10. Services for acquisition of Private Utility