

CITY OF ALLEN, TEXAS
AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made this ____ day of _____ 2020, by and between the City of Allen, Texas (the "City"), and Estrada Hinojosa & Company, Inc. ("EHC").

WHEREAS, the City's current financial advisory agreement expired on December 31, 2019; and,

WHEREAS, the City staff has recommended EHC to provide said services and additional services as shown within this agreement; and,

WHEREAS, the Governing Body of the City has selected EHC to provide the financial advisory services and has authorized the City Manager to execute an agreement with EHC.

NOW, THEREFORE, in consideration for the mutual covenants hereinafter set forth, the City of Allen, Texas, and Estrada Hinojosa & Company, Inc., agree as follows:

I. SCOPE OF SERVICES TO BE PROVIDED BY ESTRADA HINOJOSA & COMPANY, INC., IN REGARD TO THE ISSUANCE OF DEBT BY THE CITY

A. Planning & Development

- (1) Research and advise on aspects of tax exemption and arbitrage in cooperation with the City Attorney and bond counsel. Assist in obtaining Internal Revenue Service rulings deemed necessary.
- (2) Review preliminary feasibility studies in cooperation with the city, its officials and administrative staff, attorney, bond attorneys, accountants, architects and engineers, as requested by the city.
- (3) Analyze financing requirements to determine whether the needs of the city are best met by a competitive or negotiated sale of bonds; the issuance of temporary or long-term bonds or other forms of financing.
- (4) Analyze the proposed financing including funding alternatives to determine methods of strengthening marketability and recommend the best method of marketing consistent with current economic and market conditions, and rating agency criteria.
- (5) Consult with established rating agencies with regard to the proposed financing and assist the City in obtaining the most favorable rating possible by directing the preparation of appropriate information and by accompanying City representatives in meeting with rating agencies. Analyze the City's credit with reference to standards, national trends, etc., and advise on measures to be taken to improve ratings. Consult with the City on the matter of bonds/obligations ratings for the proposed issue and direct the preparation of such information as required for submission to the bond rating agencies. In case it is considered advisable for a personal presentation of information to the bond rating agencies, the financial advisor will be available to accompany those representing the City to New York, New York or Dallas, Texas or other locations for such presentation. All costs of such presentation, including any fees or charges of the

rating agencies and the cost of travel by the financial advisor shall be at the City's expense.

- (6) Coordinate the work of other professionals providing information in connection with the proposed financing.
- (7) Provide assistance in soliciting proposals and in making recommendations concerning registration, trustee, and paying agent selection decisions.
- (8) Review outstanding debt on a timely basis and, when appropriate, recommend refinancing.
- (9) Assist staff in the preparation of special studies, reports, and other special projects as requested by the City.
- (10) If provided by applicable law, review and make recommendations relating to escrow accounts to determine if restructuring will be beneficial to the City.
- (11) Make a study of the debt structure of the City, the trend of the assessed valuation, its taxing power and the present and estimated future taxing power and the present and estimated future taxing requirements. If the revenues of a system or facility are to be pledged to the repayment of the securities in question, the study will take into account any outstanding obligations which are payable from the net revenues thereof, additional net revenues to arise from any proposed rate increase and the additional net revenues as projected by the City's rate consultants and consulting engineers as a result of the improvements to be financed by these securities in question. On the basis of such study, devise and recommend for city approval, a plan of financing to cover the proposed bonds/obligations. Such a plan shall include a maturity schedule and other terms and conditions, such as the option of prior payment and the like, that will result in the issuance of bonds/obligations under terms and conditions most advantageous to the City, consistent with a minimum effective interest rate.
- (12) If a bond election is required, EHC will assist City staff with the assemblage and transmission to the bond attorneys of such data as may be required in the preparation of the necessary petitions, orders, resolutions, notices, and bonds; and will assist the Governing Body in the expeditious handling thereof. The cost of such supplies is to be paid by the City. In the event that the election should fail, then no fee shall be paid for financial advisory services unless the City and EHC had previously agreed that the scope of services was outside the context of normal financial advisory services and therefore would be subject to an hourly fee
- (13) If appropriate, direct the preparation of such information required for submission to the municipal bond insurance companies for consideration to qualify the proposed issue for municipal bond insurance and/or a surety policy. The cost of such insurance and/or surety policy may be paid by the City; however, the successful purchaser of the proposed issue is not precluded from paying such cost.

B. Marketing

- (1) Advise on the appropriate terms and conditions of the sale, such as maturity schedule and other requirements. Consult with the City and advise on advantageous features such as parity provisions, reserve requirements, sinking fund payments and redemption provisions.
- (2) Advise on the timing of the bond sale, taking into consideration such factors as changing economic conditions, other sales, current and projected market trends and convenience to the City.
- (3) Coordinate the preparation of ordinances, resolutions, or amendments with bond counsel, and ensure distribution of the necessary contracts, materials, authorizing resolutions and other documents involved in the sale.
- (4) Prepare an official statement on behalf of the City and with the cooperation of the City. Advise the City of full-disclosure requirements and conformance to suggested guidelines. Coordinate review and revision with City staff, bond counsel, and underwriter's counsel. The official statement shall be subject to final review and approval by the City prior to issuance.
- (5) Publicize the issue with the preliminary official statement, notice of sale, bid forms and such other means necessary and advisable to develop nationwide public and institutional interest. The preliminary official statement will be distributed to potential investors and purchasers of the City's securities across the nation. Those lead underwriters who are most likely to be syndicate managers will be personally contacted.
- (6) Advertise the bond sale in nationally prominent financial publications, as may be appropriate to the sale, in addition to coordinating state and local publication requirements.
- (7) Conduct information meetings if necessary and desirable with the investment community, including investment bankers and institutional investors to establish interest in the offering.
- (8) Prepare a timetable of events leading to the sale and delivery of an offering indicating who is responsible for each activity.
- (9) Assist the City in the selection of an underwriter for negotiated sales. The City Chief Financial Officer will approve the underwriters proposed by EHC. Monitor and make recommendations concerning the rates from a negotiated sale. Provide interest rate information that compares the negotiated rates with the prevailing competitive market rates.
- (10) Receive and consolidate bids from competitive sales. Coordinate and handle the bid opening and the evaluation of bids, check NIC or TIC calculations of bids submitted, and advise on the acceptability of the best bid. Utilization of an electronic bidding format is preferred.

- (11) Attend the Governing Body meeting relevant to the bid approval and prepare the necessary information for discussion with the City Council at the meeting. Make presentations as necessary to the City Council relating to the bids, ratings, or issuance of the bonds.

C. Bond Closing

- (1) Prepare a closing memorandum for all parties, directing and coordinating the bond closing.
- (2) Furnish prompt recommendations for the investment of bond proceeds to maximize earnings if requested by the City.
- (3) Provide the City with an updated debt service schedule summary for all funds showing required payment amounts and payment dates for each Series as well as an annual aggregate payment for the life of each Series and all Series combined. Other useful information may be included as recommended by EHC.
- (4) At the request of the City, EHC shall conduct a bidding process with banks or other institutions for the investment of bond proceeds in U.S. Treasury securities or other legal instruments authorized by the City's investment policy or the bond documents.
- (5) Meet with the City to critique the transaction and to determine what, if any, changes should be made to effect future quality and procedural improvements or changes.

D. Work Products

Provide the following work products for each debt offering involving G.O., utility revenue bonds, sales tax revenue bonds, or other direct obligations of the City of Allen or the component units (EDC and CDC) of the City unless specific arrangements are made for one or more of these products to be supplied by others.

- (1) Presale analysis;
- (2) Preliminary and Final Official Statements;
- (3) Post sale analysis;
- (4) Such other analysis, including analysis of funding alternatives, cash flow projections and materials necessary for financial planning and bond sale purposes; and
- (5) Continuing Disclosure information and updates (refer to II (4) below).

II. OTHER SERVICES

- (1) Meet with City staff and/or the City Governing Body regarding the capital requirements of the City as requested by the City.
- (2) Conduct such investigations and prepare special studies or reports as are requested or authorized by the City staff and/or Governing Body. EHC shall be available on a timely basis at the direction of the City to conduct or prepare the studies or reports. These reports may include issues related to G.O. bonds, Water & Sewer bonds, Sales Tax Revenue bonds, Certificates of Obligation, short term financing, new bond legislation, Tax Increment Financing bonds or any other issues that require financial advisory expertise.
- (3) Meet with City staff on at least a quarterly basis to review the status of any potential escrow restructurings, debt refunding, and project financings.
- (4) Provide the City with Continuing Disclosure information and assist the City in the preparation and submission of all Continuing Disclosure documents, as requested by the City.

III. TERM - RIGHT OF TERMINATION

- (1) This agreement shall take effect upon the latter of _____ or its approval by the City Governing Body, and shall end on _____ 20____.
- (2) Either party may cancel this agreement upon giving 30 days written notice.
- (3) The city reserves the sole right to extend said agreement at the same specifications, terms, and conditions in order to complete an activity which may be in process on _____.

IV. COMPENSATION

- (1) General. A fee for financial advisory services shall be paid by the City only in relation to a specific transaction and only upon the closing of that transaction. The proposed fee schedule attached as Exhibit A is incorporated herein as part of the agreement and reflects the agreed compensation for financial advisory services.
- (2) Other Issues. In the event that the Financial Advisor 's role is limited relating to the issuance of certain types of debt instruments, a mutually agreeable fee shall be determined when a limited scope of service is to be provided by EHC.
- (3) Under this agreement, EHC will assume incidental out-of-pocket expenses, including local travel expenses, communication expenses, and cost of financial analysis and reports prepared by EHC. The City will reimburse EHC for extraordinary expenses, provided that such reimbursement is authorized in advance by the City. The City will pay for official publication costs, registration and paying agent fees, printing of bonds and official statements, bond delivery costs, attorneys' fees, postage costs relating to the solicitation of bids, rating agencies and bond insurance fees (if applicable), any local election expenses, and related out-of-state travel expenses as authorized by the City of Allen.

Authorized expenses of this nature will be reimbursed regardless of whether or not a transaction closes.

- (4) Fees due under the fee schedule outlined above assumes successful completion of the transaction, including the approval of the bids by the Governing Body, authorization to issue the securities by the City Council, and closing of the issue. When the above does not occur, no fee is due.
- (5) Special Projects. The City may from time to time engage EHC for certain special projects not directly related to bond issuance or not specifically outlined in the services provided herein. Under such circumstances, the scope of such work and the compensation for said services will be negotiated on a case by case basis and will be agreed to in writing by both parties in advance. The fees for the special projects will be based upon the hourly rates shown in Exhibit A and is incorporated herein as part of this agreement.

V. ADDITIONAL MATTERS

- (1) This Agreement may be modified only by the written agreement of both parties.
- (2) This Agreement is subject to, and governed by the laws of the state of Texas. Exclusive venue for any actions shall be in the state district court of Collin County. The parties agree to submit to the personal and subject jurisdiction of said court.
- (3) EHC certifies that it is not in violation of the Texas "conflict of interest" statute.
- (4) EHC certifies that it is in compliance with all applicable Federal, State and local laws.
- (5) EHC further certifies that insurance coverage of the types and minimum liability limits as set forth and required in the City's "Insurance Requirements for Contracted Professional Services" will be maintained and carried in force for the duration of the contract.
 - (a) EHC shall during the term hereof maintain in full force and effect the following insurance: (1) An Errors and Omissions policy (professional liability) with a minimum combined single limit of not less than \$1,000,000. (2) Broad Form Commercial General Liability insurance with a minimum combined single limit of not less than \$1,000,000 per occurrence with an aggregate of not less than \$2,000,000; (3) A Business Automobile Liability insurance policy with a minimum of \$500,000 combined single limits coverage that applies to any vehicles owned and/or operated by EHC, its officers, agents, and employees, and used in the performance of this Agreement. (4) Statutory Worker's Compensation Insurance covering all employees involved in the provision of services under this Agreement.
 - (b) All insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; and (3) provide for a waiver of subrogation against the City for injuries including death, property damage, or any

other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.
- (d) Certificates of insurance and copies of policy endorsements evidencing the required coverages shall be submitted prior to commencement of services. On every date of renewal of the required insurance policies, the EHC shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, EHC shall within ten (10) business days after written request provide the City with certificates of insurance and policy endorsements for the insurance required herein.
- (6) This Agreement shall be binding upon the undersigned parties, their successors and assigns, but may not be assigned by EHC without the approval of the City Manager.
- (7) Notice. Any notice required or permitted to be given by either party to the other shall be in writing and shall be deemed to have been duly given when delivered personally or three (3) days following the deposit of such notice in the United States mail, sent by certified mail, return receipt requested, in a postage paid envelope addressed to the party at the address set out below:

If intended for the City, then to:

City of Allen
305 Century Parkway
Allen, Texas 75013-8042
Attn: City Manager

with copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

If intended to EHC, then to:

Estrada Hinojosa & Company, Inc.
1717 Main Street, LB 47, Suite 4700
Dallas, Texas 75201

- (8) Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement, shall survive termination.

(9) INDEMNIFICATION. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF EHC PURSUANT TO THIS AGREEMENT. EHC HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. EHC AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY EHC'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF EHC, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE EHC SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO EHC AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). EHC'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY EHC UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

IN WITNESS WHEREOF, said parties have caused this agreement to be signed by their duly-authorized representatives.

CITY OF ALLEN, TEXAS

ESTRADA HINOJOSA & COMPANY, INC.

Eric Ellwanger
City Manager

David Gordon
Senior Managing Director

ATTEST:

Shelley B. George, City Secretary

EXHIBIT A

PROPOSED FEE SCHEDULE

Estrada Hinojosa proposes the fee schedule shown below.

In consideration for the services rendered by Estrada Hinojosa & Company, Inc., the Issuer agrees that our fee for each issue of Obligations will be as follows:

Base Fee	\$4,500				1
Plus	\$ 14.00	per \$1,000 up to	\$ 250,000	or	\$8,000 for \$250,000 Bonds
Plus	10.00	per \$1,000 next	250,000	or	10,500 for \$500,000 Bonds
Plus	6.00	per \$1,000 next	500,000	or	13,500 for \$1,000,000 Bonds
Plus	3.00	per \$1,000 next	1,500,000	or	18,000 for \$2,500,000 Bonds
Plus	1.20	per \$1,000 next	2,500,000	or	21,000 for \$5,000,000 Bonds
Plus	0.85	per \$1,000 next	5,000,000	or	25,250 for \$10,000,000 Bonds
Plus	0.46	per \$1,000 over	10,000,000		

Note: "Bonds" – par plus premium minus discount.

Fees for revenue bonds or other self-supporting obligations including those obligations placed or directly issued to governmental entities or Private Placements and/or other Debt Instruments involving Escrow Agreements and Refunding Bonds: it is understood and agreed that our fee will be the fee schedule set out above plus 25%.

It is also understood and agreed that we will charge, in addition to our Financial Advisory fee, a computer fee not to exceed \$6,000 and an Official Statement preparation fee of \$4,000 whenever an official statement is prepared.

Estrada Hinojosa will bill the Issuer at Closing for each issue of Obligations a net amount which will include a fee calculated on the above schedule. Other costs associated with the completion of the project to be billed at closing include: bond insurance or other credit enhancement fees, messenger, overnight delivery, photocopying, postage and telephone reports of independent auditors or consultants travel and related expenses of the issuer and company personnel, on out-of-state related travel, if any.

For work performed which is outside of the context a debt issuance, it is agreed that Estrada Hinojosa will charge an hourly rate for work performed based on the fee schedule shown below.

<u>Title</u>	<u>Hourly Rate</u>
Senior Vice President and Above	\$ 225.00
Vice President	175.00
Assistant Vice President	145.00
Senior Associate	115.00
Associate	85.00
Administrative	65.00