



STATE OF MISSISSIPPI  
GOVERNOR TATE REEVES

DEPARTMENT OF FINANCE AND ADMINISTRATION

LIZ WELCH  
EXECUTIVE DIRECTOR

**FINANCIAL ADVISORY SERVICES CONTRACT**

This Financial Advisory Services Contract (Contract) is made by and between the State of Mississippi Department of Finance and Administration (DFA), on behalf of the State Bond Commission (Commission), and [Selected Contractor], (Advisor) effective July 1, 2021, under the following terms and conditions under which the Advisor agrees to provide services to DFA.

**1. Scope of Services**

- A. The Advisor must provide advice on the overall approach to the State's financings by working with the Department of Finance and Administration, the Office of the State Treasurer, the Office of the Attorney General, bond counsel, underwriters, and other professionals involved in the State's financings.
- B. The Advisor shall assist the State in the preparation of the financing schedule, distribution list, meeting agendas, the preliminary/final offering statements, and other documents related to the financing.
- C. The Advisor will assist with the preparation for meetings and conference calls with the State Bond Commission, the DFA and/or the Working Group.
- D. The Advisor shall assist the Commission in negotiated financings (including advice on market factors, syndicate policies, issue price, and structure).
- E. The Advisor shall assist the Commission in competitive financings (including the use of electronic bidding and publication methods, communication with underwriter syndicates, and verification of the bids).
- F. The Advisor will monitor and evaluate proposals on new products, refunding opportunities, and other financing ideas.
- G. The Advisor shall provide a transaction summary outlining pricing performance, investor participation, orders and allocations, market dynamics, sources and uses of funds, and other relevant data.
- H. The Advisor will provide market information and general financing information on a regular basis.

- I. The Advisor shall assist the Commission with regulatory issues to ensure compliance for all municipal related transactions, presentations, or any other issue related to current or future financings for the State.
- J. The Advisor will be required to assist the State in special projects relating to debt issuance, debt management, and debt reporting as assigned.
- K. The Advisor shall provide advice on the management of the State's debt including, but not limited to, refunding opportunities, the analysis of derivative products, investment of bond proceeds, and other strategies related to the management of the State's existing debt portfolio.
- L. The Advisor is required to assist the Commission with special projects as determined by mutual agreement.
- M. The Advisor shall provide updates to the Commission and/or its staff with regarding to any rule changes, additions, etc. made by the MSRB and any other municipal securities governing agency.
- N. The Advisor will assist with tasks as required by the State of Mississippi's Debt Management policy located at <https://www.dfa.ms.gov/dfa-offices/bond-advisory-division/>

## 2. **Contract Term**

- A. The effective date of this Contract will be **July 1, 2021**. This Contract's term will be for four (4) years with one (1) optional one-year renewal to be exercised in the discretion of DFA.
- B. All records and information provided by DFA to the Advisor are the sole property of the DFA and shall be returned to the DFA within thirty (30) days of the termination date of this Contract.
- C. Upon termination of this Contract, the Advisor shall cooperate with the DFA and the new Advisor during the transition of the DFA's business to the new Advisor. Upon request from the DFA, the Advisor shall provide all DFA information maintained by the Advisor in a time frame specified by the DFA.

## 3. **Consideration**

The DFA agrees to compensate the Advisor for services approved by the DFA and performed by the Advisor under the terms of this Contract as follows:

- A. The fees listed in **Exhibit A – Pricing** shall constitute the entire compensation due to the Advisor for services and all of the Advisor's obligations hereunder regardless of the difficulty, materials, or equipment required. The DFA shall not provide any prepayments or initial deposits in advance of services being rendered. Payment for any and all services provided by the Advisor to the DFA shall be made only after said services have been duly performed and properly invoiced. The fees listed in **Exhibit**

- A – Pricing** of this Contract are firm for the duration of this Contract and are not subject to escalation for any reason, unless this Contract is duly amended.
- B. The Advisor must submit all invoices, in a form acceptable to the DFA (provided that such acceptance will not be unreasonably withheld) with all the necessary supporting documentation, prior to any payment to the Advisor. No additional compensation will be provided by the DFA for any expense, cost, or fee not specifically authorized by this Contract, or by written authorization from the DFA.
- C. The payment of an invoice by the DFA shall not prejudice the DFA's right to object or question any invoice or matter in relation thereto. Such payment by the DFA shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. The Advisor's invoice or payment may be subject to further reduction for amounts included in any invoice or payment theretofore made which are determined by the DFA, on the basis of audits, not to constitute allowable costs.

**4. Availability of Funds**

It is expressly understood and agreed that the obligation of the DFA to proceed under this Contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Contract are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the DFA, the DFA shall have the right upon ten (10) working days written notice to Advisor, to terminate this Contract without damage, penalty, cost or expenses to the DFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

**5. E-Payment**

Advisor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*

**6. Paymode**

Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Advisor's choice. The State may, at its sole discretion, require Advisor to electronically submit invoices and supporting documentation at any time during the term of this Contract. Advisor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

**7. Recovery of Money**

Whenever, under the Contract, any sum of money shall be recoverable from or payable by the Advisor to the DFA, the same amount may be deducted from any sum due to the Advisor under the Contract or under any other Contract between the Advisor and the DFA. The rights of the DFA are in addition and without prejudice to any other right the DFA may have to claim the amount of any loss or damage suffered by the DFA on account of the acts or omissions of the Advisor.

**8. Applicable Law**

The Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Advisor shall comply with applicable federal, state, and local laws and regulations.

**9. Compliance with Laws**

Advisor understands that DFA is an equal opportunity employer and, therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and Advisor agrees during the term of this Contract that Advisor will strictly adhere to this policy in its employment practices and provision of services. Advisor shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

**10. Force Majeure**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, Advisor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

**11. Anti-Assignment/Subcontracting**

Advisor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Advisor’s special skills and expertise. Advisor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract

shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

**12. Confidentiality**

Notwithstanding any provision to the contrary contained herein, it is recognized that DFA is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to DFA pursuant to the contract and designated by the Advisor in writing as trade secrets or other proprietary confidential information, DFA shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The DFA shall not be liable to the Advisor for disclosure of information required by court order or required by law.

**13. Disclosure of Confidential Information**

In the event that either party to this Contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

Any liability resulting from the wrongful disclosure of confidential information on the part of Advisor or its subcontractor shall rest with Advisor. Disclosure of any confidential information by Advisor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this Contract.

**14. Transparency**

This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Mississippi Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Advisor as trade secrets, or other proprietary information, including confidential Advisor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

**15. Contractor Personnel**

The DFA shall, throughout the life of the Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the Advisor. If the DFA reasonably rejects staff or subcontractors, the Advisor must provide replacement staff or subcontractors satisfactory to the DFA in a timely manner and at no additional cost to the DFA. The day-to-day supervision and control of the Advisor's employees and subcontractors is the sole responsibility of the Advisor.

**16. Independent Advisor**

The Advisor shall, at all times, be regarded as and shall be legally considered an Independent Advisor and shall at no time act as an agent for the DFA. Nothing contained herein shall be deemed or construed by DFA, Advisor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between DFA and Advisor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of DFA or Advisor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of DFA and Advisor. Advisor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of DFA. No act performed or representation made, whether oral or written, by the Advisor with respect to third parties shall be binding on the DFA. Neither the Advisor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the DFA; and the DFA shall at no time be legally responsible for any negligence or other wrongdoing by the Advisor, its servants, agents, or employees. DFA shall not withhold from the Contract payments to Advisor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Advisor. Further, DFA shall not provide to Advisor any insurance coverage or other benefits, including Workers' Compensation, normally provided by DFA for its employees.

**17. E-Verification**

If applicable, Advisor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Advisor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Advisor agrees to provide a copy of each such verification. Advisor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this Contract may subject Advisor to the following: (i) termination of this Contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;

(ii) the loss of any license, permit, certification or other document granted to Advisor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or, (iii) both. In the event of such cancellations/termination, Advisor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

**18. Authority to Contract**

Advisor warrants: (a) that it is a validly organized business with valid authority to enter into this Contract; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this Contract is not restricted or prohibited by any loan, security, financing, contractual, or other contract of any kind; and, (d) notwithstanding any other provision of this Contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

**19. License Requirements**

The Advisor shall have, or obtain, any license/permits that are required prior to and during the performance of work under this Contract.

**20. Debarment and Suspension**

The Advisor certifies to the best of its knowledge and belief, that it: (i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any Federal department or agency or any political subdivision or agency of the State of Mississippi; (ii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; (iii) Has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iv) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of these offenses enumerated in paragraphs two (2) and three (3) of this certification; and, (v) Has not, within a three-year period preceding this proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

**21. Modification or Renegotiation**

This Contract may be modified only by written Contract signed by the parties hereto. The parties agree to renegotiate the Contract if federal, state and/or the DFA revisions of any applicable laws or regulations make changes in this Contract necessary.

**22. Procurement Regulations**

This Contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at [www.DFA.ms.gov](http://www.DFA.ms.gov).

**23. Representation Regarding Contingent Fees**

Advisor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Advisor's bid or proposal.

**24. Representation Regarding Gratuities**

The Advisor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

**25. Termination upon Bankruptcy**

This Contract may be terminated in whole or in part by DFA upon written notice to Advisor, if Advisor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Advisor of an assignment for the benefit of its creditors. In the event of such termination, Advisor shall be entitled to recover just and equitable compensation for satisfactory work performed under this Contract, but in no case shall said compensation exceed the total Contract price.

**26. Termination for Convenience**

A. Termination. The Agency Head or designee may, when the interests of the State so require, terminate this Contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Advisor specifying the part of the Contract terminated and when termination becomes effective.

B. Advisor's Obligations. Advisor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, Advisor will stop work to the extent specified. Advisor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Advisor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Advisor to assign Advisor's right, title, and interest under terminated orders or subcontracts to the State. Advisor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

**27. Termination for Default**

A. Default. If Advisor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this

Contract or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency Head or designee may notify Advisor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Advisor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Advisor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- B. Advisor's Duties. Notwithstanding termination of the Contract and subject to any directions from the Chief Procurement Officer, Advisor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Advisor in which the State has an interest.
- C. Compensation. Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due Advisor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- D. Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractor, Advisor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Advisor to make progress in the prosecution of the work hereunder which endangers such performance) if Advisor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Advisor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Advisor to meet the Contract requirements. Upon request of Advisor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Advisor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience. (As used in this paragraph of this clause, the term "subcontractor" means a subcontractor at any tier).

- E. Erroneous Termination for Default. If, after notice of termination of Advisor's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (D) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience for the State, be the same as if the notice of termination had been issued pursuant to a termination for convenience.
- F. Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

**28. Stop Work Order**

- A. Order to stop work. The Chief Procurement Officer, may by written order to the Advisor at any time, and without notice to any surety, require the Advisor to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Advisor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Advisor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Chief Procurement Officer shall either (i) cancel the stop work order; or (ii) terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.
- B. Cancellation or Expiration of the Order. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Advisor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Advisor price, or both, and the Contract shall be modified in writing accordingly, if: (i) the stop work order results in an increase in the time required for, or in the Advisor's cost properly allocable to, the performance of any part of this Contract; and, (ii) Advisor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- C. Termination of Stopped Work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- D. Adjustment of Price. Any adjustment in Contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this Contract.

**29. Price Adjustment**

A. Price Adjustment Methods. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

- a. by agreement on a fixed price adjustment before commencement of the additional performance;
- b. by unit prices specified in the contract;
- c. by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- d. by a price escalation clause.

B. Submission of Cost or Pricing Data. The Advisor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

**30. Oral Statements**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the Contract must be made in writing by the DFA and agreed to by the Advisor.

**31. Ownership of Documents and Work Papers**

The DFA shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Contract which is the subject of this Contract, except for the Advisor's internal administrative and quality assurance files and internal project correspondence. The Advisor shall deliver such documents and work papers to the DFA upon termination or completion of the Contract. The foregoing notwithstanding, the Advisor shall be entitled to retain a set of such work papers for its files. The Advisor shall be entitled to use such work papers only after receiving written permission from DFA and subject to any copyright protections.

**32. Trade Secrets, Commercial and Financial Information**

It is expressly understood that Mississippi law requires that the provisions of this Contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

**33. Third-Party Action Notification**

The Advisor shall give the DFA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Advisor by any entity that may result in litigation related in any way to this Contract.

**34. Indemnification**

To the fullest extent allowed by law, the Advisor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and

against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Advisor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this contract. In the State's sole discretion upon approval of the Mississippi Attorney General, Advisor may be allowed to control the defense of any such claim, suit, etc. In the event Advisor defends said claim, suit, etc., the Advisor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Advisor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Advisor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

**35. Approval**

It is understood that if this Contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this Contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

**36. Change in Scope of Work**

The DFA may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by Advisor that the scope of the project or of Advisor's services has been changed, requiring changes to the amount of compensation to the Advisor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the DFA and the Advisor. If the Advisor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Advisor, the Advisor must immediately notify the DFA in writing of this belief. If the DFA believes that the particular work is within the scope of the Contract as written, the Advisor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the Contract.

**37. Disputes**

Any dispute concerning the Contract which is not disposed of by agreement shall be decided by the Executive Director of DFA who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Advisor. The decision of the Executive Director shall be final and conclusive. Nothing in this paragraph shall be construed to relieve the Advisor of full and diligent performance of the Contract.

**38. Attorney's Fees and Expenses**

Subject to other terms and conditions of this agreement, in the event Advisor defaults in any obligations under this agreement, Advisor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Advisor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Advisor.

**39. Failure to Enforce**

Failure by the DFA at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the DFA to enforce any provision at any time in accordance with its terms.

**40. Record Retention and Access to Records**

Provided Advisor is given reasonable advance written notice and such inspection is made during normal business hours of Advisor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Advisor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Advisor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

**41. Right to Audit**

Advisor shall maintain such financial records and other records as may be prescribed by DFA or by applicable federal and state laws, rules, and regulations. Advisor shall retain these records for a period of three years after final payment, or until they are audited by DFA, whichever event occurs first. These records shall be made available for inspection during regular business hours and with reasonable advance notice during the term of the Contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

**42. Right to Inspect Facility**

The State may, at reasonable times, inspect the place of business of a Advisor or any subcontractor which is related to the performance of any contract awarded by the State.

**43. Severability**

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the Contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

**44. Notices**

All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth in this section. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

If to DFA:

Attention: Saranne Smith  
Department of Finance and Administration  
Office of Procurement and Contracts  
501 North West Street  
Suite 1301-A Woolfolk Building  
Jackson, Mississippi 39205-0267

If to the Advisor:

Attention:

**45. Priority**

The Contract consists of this agreement including Exhibit A, *Pricing*, the response bid by the Advisor dated [date] (hereinafter “Bid” and attached as Exhibit B) and the Invitation for Bids for  Services dated [date] (hereinafter “IFB” and attached as Exhibit C). Any ambiguities, conflicts or questions of interpretation of this Contract shall be resolved by first, reference to this agreement and, if still unresolved, by reference to the IFB and, if still unresolved, by reference to the Bid. Omission of any term or obligation from this agreement or attached Exhibits A, B and C shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere in this Contract.

**Witness our signatures, on the date first written.**

[Advisor Name]

Department of Finance and Administration

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**PRICING**

**EXHIBIT B**

**THE ADVISOR'S RESPONSE TO THE DEPARTMENT OF FINANCE AND  
ADMINISTRATION'S INVITATION FOR BIDS FOR FINANCIAL ADVISORY  
SERVICES DATED [Date]**

**EXHIBIT C**

**THE DEPARTMENT OF FINANCE AND ADMINISTRATION'S REQUEST FOR  
PROPOSALS FOR FINANCIAL ADVISORY SERVICES DATED  
MARCH 24, 2021**