

# **University Park Recreation District**

**Consideration of Resolution 2019-16,  
Designating Fishkind & Associates, Inc. as  
District Manager of and Assessment  
Consultant for and Financial Advisor to the  
District**

## RESOLUTION 2019-16

### **A RESOLUTION DESIGNATING FISHKIND & ASSOCIATES, INC., AS DISTRICT MANAGER OF AND ASSESSMENT CONSULTANT FOR AND FINANCIAL ADVISOR TO THE UNIVERSITY PARK RECREATION DISTRICT, AUTHORIZING COMPENSATION, AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the University Park Recreation District ("District") is a local unit of special-purpose government created and existing pursuant to Chapter 418, *Florida Statutes*, and Manatee County Ordinance No. 18-29 and being situated in the Manatee County, Florida; and

**WHEREAS**, the Board of Supervisors ("Board") of the District has previously appointed Fishkind & Associates, Inc. as District Manager and Assessment Consultant (hereinafter, collectively, the "District Manager") and Financial Advisor; and

**WHEREAS**, the Board of Supervisors and Fishkind & Associates, Inc. desire to enter into a revised District Management Agreement and Financial Advisor Agreement (collectively, the "Fishkind Agreement"), which shall be dated effective as of the date of this Resolution, the forms of which are attached hereto as **Exhibit A**; and

**WHEREAS**, pursuant to the terms of the Fishkind Agreement, Fishkind & Associates, Inc. may, upon notice to the District, assign its rights and obligations under such agreement to any subsidiary, affiliate, or successor in connection with the sale of all or substantially all of Fishkind & Associates, Inc.'s assets; and

**WHEREAS**, Fishkind & Associates, Inc. has recently advised the Board of Supervisors of the District of its intent to enter into a proposed transaction (the "Transaction") with PFM Financial Advisors LLC or PFM Consulting Services, LLC or its affiliate(s) (collectively, "PFM") whereby Fishkind will sell all or substantially all of its assets to PFM; and

**WHEREAS**, in connection with the Transaction and pursuant to the Fishkind Agreement, Fishkind & Associates, Inc. desires to assign its rights and obligations as District Manager and Financial Advisor under the Fishkind Agreement to PFM upon and after the date the Transaction is consummated, and the Board is amenable to such assignment upon the consummation of the Transaction.

### **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE UNIVERSITY PARK RECREATION DISTRICT:**

1. Fishkind & Associates, Inc. has previously been appointed the District Manager and Financial Advisor to the District.

2. Fishkind & Associates, Inc., shall be compensated for services in such capacity in the manner prescribed set forth in the Fishkind Agreement attached hereto as **Exhibit A**, which agreement is approved as to form and substance. Upon execution of the Fishkind Agreement attached hereto as **Exhibit A**, all prior agreements relating to the services contemplated in the Fishkind Agreement attached hereto as **Exhibit A** are hereby rescinded by the parties and shall be of no further force and effect.
3. The assignment by Fishkind & Associates, Inc. of all of its rights and obligations as District Manager and Financial Advisor under the Fishkind Agreement to PFM is approved by the Board in connection with, and shall become effective upon, consummation of the Transaction referenced hereinabove.
4. This Resolution shall become effective immediately upon its adoption.

**Adopted this 4th day of January, 2019.**

**ATTEST:**

**UNIVERSITY PARK  
RECREATION DISTRICT**

  
Secretary

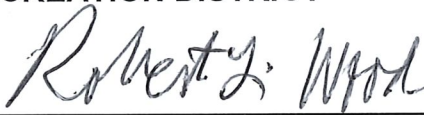
  
Chairman

Exhibit A: District Management and Assessment Consultant Agreement and Financial Advisory Agreement

Exhibit A  
District Management and Assessment Consultant Agreement  
and  
Financial Advisory Agreement

## **DISTRICT MANAGEMENT AND ASSESSMENT CONSULTANT AGREEMENT**

This District Management Agreement (this "Agreement"), made and entered into this 4<sup>th</sup> day of January, 2019 (the "Effective Date") by and between University Park Recreation District ("DISTRICT") and Fishkind & Associates, Inc. (hereinafter called the "MANAGER") sets forth the terms and conditions under which MANAGER shall provide services.

WHEREAS, the DISTRICT desires to obtain the services of a MANAGER to provide District Management Services; and

WHEREAS, MANAGER is capable of providing the necessary services.

NOW, THEREFORE, in consideration of the above mentioned premises and intending to be legally bound hereby, the DISTRICT and MANAGER agree as follows:

### **I. SCOPE OF SERVICES**

MANAGER shall provide District Management Services as set forth in Exhibit A to this Agreement. Any material changes in or additions to the scope of services described in Exhibit A shall be promptly reflected in a written supplement or amendment to this Agreement. Services provided by MANAGER which are not specifically referenced in the scope of services set forth in Exhibit A of this Agreement shall be completed as agreed in writing in advance between the DISTRICT and MANAGER. Upon request of DISTRICT, MANAGER or an affiliate of MANAGER may agree to additional services to be provided by MANAGER or an affiliate of MANAGER, by a separate agreement between the DISTRICT and MANAGER or its respective affiliate.

### **II. WORK SCHEDULE**

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

### **III. COMPENSATION**

For the services provided under this Agreement, MANAGER's professional fees shall be paid as provided in Exhibit B to this Agreement and DISTRICT shall pay expenses and fees for other services not set forth in Exhibit A as provided below.

#### **1. Reimbursable Expenses**

In addition to fees for services, MANAGER 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 MANAGER only as authorized by the DISTRICT's approved budget. Documentation of such expenses will be provided to the DISTRICT upon request.

## **2. Other Services**

Any services which are not included in the scope of services set forth in Exhibit A of this Agreement will be subject to separate, mutually acceptable fee structures.

## **IV. TERM AND TERMINATION**

This Agreement shall be effective from the Effective Date and shall continue until terminated by either party as provided herein. The DISTRICT has the right to terminate this Agreement for "good cause" which shall include misfeasance, malfeasance, nonfeasance or dereliction of duties by the MANAGER which, in each case, the MANAGER fails to cure within 10 days of notice thereof. Termination for "good cause" shall be effected immediately by provision of written notice to MANAGER. Either party hereto shall have the right to terminate this Agreement, at any time and for any reason whatsoever, upon (i) the DISTRICT providing to the MANAGER a minimum of thirty (30) days advance written notice of its intention to terminate or (ii) the MANAGER providing to the DISTRICT a minimum of sixty (60) days advance written notice of its intention to terminate. All notices shall be mailed to the person and address specified for use in the giving of notice, in paragraph 10, hereof. Should the relationship be terminated, MANAGER will be paid for all services performed and costs and expenses incurred up to the termination date.

## **V. ASSIGNMENT**

Neither party may assign this Agreement or its rights or obligations hereunder without the prior written consent of the other; provided, however, that MANAGER may, upon notice to the DISTRICT, assign MANAGER's rights and obligations under this Agreement to any subsidiary or affiliate of MANAGER or a successor of MANAGER in connection with the sale of all or substantially all of MANAGER's assets. Subject to the foregoing, this Agreement shall be binding on the parties hereto and their respective successors and assigns.

## **VI. OWNERSHIP OF INFORMATION, REPORTS, AND DATA**

All information, data, reports, and records in the possession of the DISTRICT or any third party necessary for carrying out any services to be performed under this Agreement ("Data") shall be furnished to MANAGER and the DISTRICT shall, and shall cause its agent(s) to, cooperate with MANAGER in its conduct of reasonable due diligence in performing the services, including with respect to the facts that are necessary in its recommendation(s) to the DISTRICT in connection with a transaction or financial product and/or relevant to a DISTRICT's determination whether to proceed with a course of action. To the extent DISTRICT requests that MANAGER provide advice with regard to any recommendation made by a third party, DISTRICT will provide to MANAGER written direction to do so as well as any Data it has received from such third party relating to its recommendation. DISTRICT acknowledges and agrees that while MANAGER is relying on the Data in connection with its provision of the services under this Agreement, MANAGER makes no representation with respect to and shall not be responsible for the accuracy or completeness of such Data.

## **VII. 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:

### **UNIVERSITY PARK RECREATION DISTRICT**

Blalock Walters, P.A.  
802 11<sup>th</sup> Street West  
Bradenton, FL 34205  
Attention: Mark Barnebey

### **FA**

Fishkind & Associates, Inc.  
12051 Corporate Boulevard  
Orlando, FL 32801  
Attention: Hank Fishkind, President

## **VIII. TITLE TRANSFER**

All materials, except functioning or dynamic financial models, prepared by MANAGER pursuant exclusively to this Agreement shall be the property of the DISTRICT. Subject to the foregoing exception, upon termination of this Agreement, at DISTRICT's reasonable request no later than three (3) years after the termination of this Agreement MANAGER shall deliver to the DISTRICT copies of any and all materials or documents prepared, kept or maintained in accordance with this Agreement.

## **IX. MANAGER'S REPRESENTATIVES**

### **1. Assignment of Named Individuals**

The professional employees of MANAGER set forth below will provide the services set forth in this Agreement; provided that MANAGER may, from time to time, supplement or otherwise amend the team members set forth below.

Hank Fishkind, Ph.D.  
Carol Harris

### **2. Changes in Staff Requested by the DISTRICT**

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

## **X. INSURANCE**

MANAGER shall maintain insurance coverage with policy limits not less than as stated in Exhibit C.

### **XIII. GENERAL PROVISIONS**

#### **1. MANAGER Not to Participate as Underwriter**

The MANAGER is precluded from being an underwriter of any debt obligations issued by the DISTRICT and shall not market or otherwise be responsible for the initial offering of the issuance of any of the DISTRICT's debt obligations.

#### **2. Limitation of Liability**

Except to the extent caused by willful misconduct, bad faith, gross negligence or reckless disregard of obligations or duties under this Agreement on the part of MANAGER or any of its associated persons, neither MANAGER nor any of its associated persons shall have liability to any person for (i) any act or omission in connection with the performance of its services hereunder, (ii) any error of judgment or mistake of law, or (iii) any loss arising out of or any financial or other damages resulting from DISTRICT's election to act or not to act, as the case may be, contrary to or, absent negligence on the part of MANAGER or any of its associated persons, upon any advice or recommendation provided by MANAGER to DISTRICT.

#### **3. Disclaimer of MANAGER**

The DISTRICT acknowledges that the MANAGER is not an attorney and may not render legal advice or opinions. Although the MANAGER may participate in accumulating information necessary for documents required by the DISTRICT to finalize any particular financing, such information shall be verified by the DISTRICT as to its correctness; provided, however, that the DISTRICT shall not be required to verify the correctness of any information originated by the MANAGER or the correctness of any information originated by the MANAGER which the MANAGER has used to formulate its opinions and advice given to the DISTRICT.

#### **4. Attorney Fees and Governing Law**

MANAGER and the DISTRICT agree that, should a disagreement arise as to the terms or enforcement of any provision of this Agreement, each party will in good faith attempt to resolve said disagreement prior to pursuing other action. This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Florida. In the event either party is required to take any action to enforce this Agreement, the substantially prevailing party shall be entitled to attorney's fees and costs, including fees and costs incurred in determining entitlement to and reasonableness of such fees and costs.



5. Time of the Essence

The DISTRICT and the MANAGER agree that time is of the essence and that the services of the MANAGER shall be performed expeditiously.

6. Entire Agreement

This Agreement represents the entire agreement between DISTRICT and MANAGER for District Management Services contemplated hereby and supersedes all prior agreements, contracts, arrangements, or communications between the parties with respect to the subject matter addressed herein, whether oral or written. This Agreement may not be amended or modified except in writing signed by both parties. For the sake of clarity, any separate agreement between DISTRICT and MANAGER or any affiliate of MANAGER shall not in any way be deemed an amendment or modification of this Agreement. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

7. Authority to Execute and Counterparts

Each party to this Agreement represents, warrants, and covenants to the other that the person or persons signing this Agreement on behalf of such party is authorized and empowered to sign and deliver this Agreement for such party, that such party has the lawful authority to enter into this relationship, and that the governing or managing body of each party has approved this relationship and has similarly authorized the execution of this Agreement. This Agreement may be signed in any number of counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same document.

8. Public Records Disclosure

MANAGER understands and agrees that all documents of any kind provided to the DISTRICT in connection with this Agreement may be public records, and, accordingly, MANAGER agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, Florida Statutes. MANAGER acknowledges that the designated public records custodian for the DISTRICT is Fishkind & Associates, Inc. ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the MANAGER shall 1) keep and maintain public records required by the DISTRICT to perform the service; 2) upon request by the Public Records Custodian, provide the DISTRICT with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the Agreement term and following the Agreement term if the MANAGER does not transfer the records to the Public Records Custodian of the DISTRICT; and 4) upon completion of the Agreement, transfer to the DISTRICT, at no cost, all public records in MANAGER's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the MANAGER, the MANAGER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the DISTRICT in a format that is compatible with Microsoft Word or Adobe PDF formats.

**IF THE FA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING**

TO THIS CONTRACT, CONTACT THE CUSTODIAN OF  
PUBLIC RECORDS AT:

FISHKIND & ASSOCIATES, INC.  
12051 CORPORATE BOULEVARD  
ORLANDO, FL 32801  
ATTENTION: HANK FISHKIND, PRESIDENT

9. Independent Contractor

MANAGER, 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 DISTRICT by virtue of this Agreement or any actions or services rendered under this Agreement. Nothing in this Agreement is intended or shall be construed to give any person, other than the Parties hereto, their successors and permitted assigns, any legal or equitable rights, remedy or claim under or in respect of this Agreement or any provisions contained herein. In no event will MANAGER be liable for any act or omission of any third party or for any circumstances beyond MANAGER's reasonable control including, but not limited to, fire, flood, or other natural disaster, war, riot, strike, act of terrorism, act of civil or military authority, software and/or equipment failure, computer virus, or failure or interruption of electrical, telecommunications or other utility services.

In witness whereof, the parties hereto have executed this Agreement, in duplicate, as of the Effective Date above written.

**Board of Supervisors:**

University Park Recreation District

Sign

Print Name

**Fishkind & Associates, Inc.**

Hank Fishkind, Ph.D., President

## EXHIBIT A

### SCOPE OF SERVICES

#### I. General Management Services

General Consultation, Meetings, and DISTRICT Representation

The Manager shall organize the DISTRICT meetings. This includes, but is not limited to, providing the agenda and Board packages, scheduling, notification, publication and related matters. The service to be provided shall also include, but not be limited to planning, scheduling, production and quality control, coordination, and administration of various professional service elements.

The manager shall prepare and submit to the DISTRICT's Board of Supervisors a proposed annual budget and administer the adopted budget of the DISTRICT.

As the DISTRICT's Manager, we will consult with the DISTRICT Board of Supervisors and its designated representatives, and when necessary, participate in such meetings, discussions, project site visits, workshops, and hearings as may pertain to the administration, accomplishment and fulfillment of the professional services with regard to the projects and general interest of the DISTRICT.

The Manager shall consult with and advise the DISTRICT on matters related to the operation and maintenance of the DISTRICT and assist the DISTRICT to ensure compliance with all statutes and applicable law affecting the DISTRICT. The Manager will maintain the DISTRICT's website in compliance with applicable law and ensure an e-mail system is in place which provides a separate "CDD e-mail address" for all Board members with an archiving system which will allow the Manager to respond to public records requests and maintain e-mails in compliance with applicable records retention law.

#### II. Accounting Services

The Manager shall define and implement an integrated management reporting system which will allow the DISTRICT to represent fairly and with full disclosure the financial position of the DISTRICT. Monthly financial statements will be provided in addition to a year-end audited financial statement to be prepared by a certified public accounting firm selected by the DISTRICT. These services will be coordinated with the DISTRICT's auditors to assure a smooth and efficient audit of the DISTRICT's books.

#### III. Minutes and Records

The Manager shall define and implement a system of record management for the DISTRICT, including a concise and accurate record of the official actions of the Board of Supervisors and any appointed boards or committees, and shall oversee the maintenance and disclosure of DISTRICT's records pursuant to Florida law.

#### IV. Annual Assessments, Lien Book Maintenance and Dissemination Agent

The Manager will maintain the tax roll for the DISTRICT and coordinate and report to the Tax Assessor and Tax Collector for the jurisdiction in which the DISTRICT exists.

The Manager will administer the DISTRICT's assessment methodology during platting and maintain the DISTRICT's lien book and release of liens at closings.

The Manager will provide continuing disclosure filing coordination and assistance for DISTRICT debt issues on EMMA as required by the MSRB and other regulatory agencies.

V. Assessment Consulting Services

The Manager shall formulate the DISTRICT's special assessment methodology or similar security for debt issuance in consultation with the DISTRICT's counsel, consulting engineer, bond counsel, and other consultants and professionals, including the preparation of an assessment methodology report.

**EXHIBIT B**  
**COMPENSATION FOR SERVICES**

The table below outlines the minimum management fees. The fees depend upon the type of district, the website selected, and the number of debt issues outstanding for the DISTRICT. Fees are reviewed and adjusted annually pursuant to the DISTRICT's budget process. Our fees include the provision of the services described in Exhibit A, as well as the reimbursable expenses set forth in Section III(1). All fees listed below were previously approved in the District's budget.

<i>University Park Recreation District</i>	<i>Set Up</i>	<i>Annual</i>
District Management	\$50,000	\$50,000
Accounting/Controllershship	\$50,000	\$50,000
Website	\$5,000	\$2,500
Lien Book, Tax Roll, Continuing Disclosure Services	\$5,000	\$10,000 \$5,000

**EXHIBIT C**  
**INSURANCE**

MANAGER shall provide and maintain the following levels of insurance coverage at all times subsequent to the execution of this Agreement:

- a) Worker's Compensation insurance to cover full liability under worker's compensation laws in effect in Florida.
- b) General Liability insurance with limit of one million dollars (\$1,000,000.00) per each occurrence.
- c) Professional Liability insurance with limit of one million dollars (\$1,000,000.00) per each occurrence. Claims-made policies shall have at least a three-year reporting period.
- d) Employment Practices Liability insurance with limit of two million dollars (\$2,000,000.00) per each occurrence.
- e) Commercial Crime insurance with limit of two million dollars (\$2,000,000.00) per each occurrence.
- f) Comprehensive Automobile Liability insurance for all hired and non-owned vehicles used by the Consultant's staff with a combined single limit of one million dollars (\$1,000,000.00).

The DISTRICT (and its staff, consultants, and supervisors as applicable) will be listed as additional insureds on the General Liability and Automobile insurance policies described above. The DISTRICT (and its staff, consultants, and supervisors as applicable) will be listed as a joint loss payee on the Commercial Crime insurance. None of the policies above may be canceled during the term of this Agreement (or otherwise cause the DISTRICT to not be named as an additional insured or joint loss payee where applicable) without sixty (60) days written notice to the DISTRICT. MANAGER will furnish the DISTRICT with a Certificate of Insurance evidencing compliance with this section prior to Agreement commencement and upon request.

## **FINANCIAL ADVISORY AGREEMENT**

This agreement ("Agreement"), made and entered into this 4th day of January, 2019, (the "Effective Date") by and between University Park Recreation District ("DISTRICT") and Fishkind & Associates, Inc. (hereinafter called "FA"), sets forth the terms and conditions under which FA shall provide services.

WHEREAS, the DISTRICT desires to obtain the services of a financial advisor to develop and assist in implementing the DISTRICT's strategies to meet its current and long-term operations, financial obligations, capital financing needs and render assistance in respect to debt transactions; and

WHEREAS, FA is capable of providing the necessary financial advisory services.

NOW, THEREFORE, in consideration of the above mentioned premises and intending to be legally bound hereby, DISTRICT and FA agree as follows:

### **I. SCOPE OF SERVICES**

FA shall provide, upon request of the DISTRICT, services related to financial planning, budget and strategic advice and planning, policy development and services related to debt issuance, as applicable and set forth in Exhibit A to this Agreement. DISTRICT acknowledges and agrees that most tasks requested by DISTRICT will not require all services provided for in Exhibit A and as such the specific scope of services for such task shall be limited to just those services required to complete the task. Any material changes in or additions to the scope of services described in Exhibit A shall be promptly reflected in a written supplement or amendment to this Agreement. Services provided by FA which are not specifically referenced in the scope of services set forth in Exhibit A of this Agreement shall be completed as agreed in writing in advance between the DISTRICT and FA.

### **II. WORK SCHEDULE**

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

### **III. REGISTERED MUNICIPAL ADVISOR; REQUIRED DISCLOSURES**

1. FA is a registered municipal advisor with the Securities and Exchange Commission (the "SEC") and the Municipal Securities Rulemaking Board (the "MSRB"), pursuant to the Securities Exchange Act of 1934 Rule 15Ba1-2. If DISTRICT has designated FA as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption"), then services provided pursuant to such designation shall be the services described in Exhibit A hereto, subject to any limitations provided herein. FA shall not be responsible for, or have any liability in connection with, verifying that FA is independent from any other party seeking to rely on the IRMA exemption (as such independent status is required pursuant to the IRMA exemption, as interpreted from time to time by the SEC). DISTRICT acknowledges and agrees that any reference to FA, its personnel and its role as IRMA, including in the written representation of DISTRICT required under SEC Rule 15Ba1-1(d)(3)(vi)(B) shall be subject to prior approval by FA. DISTRICT further agrees not to represent

that FA is DISTRICT's IRMA with respect to any aspect of a municipal securities issuance or municipal financial product, outside of the scope of services without FA's prior written consent.

2. MSRB Rules require that municipal advisors make written disclosures to their DISTRICTs of all material conflicts of interest, certain legal or disciplinary events and certain regulatory requirements. Such disclosures are provided in FA's Disclosure Statement delivered to DISTRICT together with this Agreement.

#### **IV. FINANCIAL ADVISORY COMPENSATION**

For the services provided under this Agreement, FA's professional fees shall be paid as provided in Exhibit B to this Agreement and DISTRICT shall pay expenses and fees for other services not set forth in Exhibit A as provided below.

##### **1. Reimbursable Expenses**

In addition to fees for services, FA 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 FA subject to the limitations of Chapter 112.061, F.S. Upon request of DISTRICT, documentation of such expenses will be provided.

##### **2. Other Services**

Any services which are not included in the scope of services set forth in Exhibit A of this Agreement will be subject to separate, mutually acceptable fee structures.

#### **V. TERMS AND TERMINATION**

This Agreement shall be effective as of the Effective Date until January 4, 2020 (the "Initial Term") and shall automatically renew for additional one (1) year periods (each a "Renewal Term" and together with the Initial Term, the "Term") with a maximum of four renewal periods, unless terminated in writing by either party upon thirty (30) days written notice to the other party without cause, or immediately upon written notice for good cause. For purposes of this Agreement, the term "good cause" shall include misfeasance, malfeasance, nonfeasance or dereliction of duties by FA which, in each case, FA fails to cure within 10 days of notice thereof. Upon such termination, FA will be paid for all services performed and costs and expenses incurred up to the termination date.

#### **VI. ASSIGNMENT**

Neither party may assign this Agreement or its rights or obligations hereunder without the prior written consent of the other party ; provided that upon notice to DISTRICT, (i) FA may assign this Agreement or any interests hereunder to a municipal advisor entity registered with the SEC that directly or indirectly controls, is controlled by, or is under common control with, FA, or (ii) to any subsidiary or affiliate of FA or a successor of FA in connection with the sale of all or substantially all of FA's assets. Subject to the foregoing, this Agreement shall be binding on the parties hereto and their respective successors and assigns.



## **VII. INFORMATION TO BE FURNISHED TO FA**

All information, data, reports, and records in the possession of the DISTRICT or any third party necessary for carrying out any services to be performed under this Agreement ("Data") shall be furnished to FA and the DISTRICT shall, and shall cause its agent(s) to, cooperate with FA in its conduct of reasonable due diligence in performing the services, including with respect to the facts that are necessary in its recommendation(s) to the DISTRICT in connection with a municipal securities transaction or municipal financial product and/or relevant to the DISTRICT's determination whether to proceed with a course of action. To the extent DISTRICT requests that FA provide advice with regard to any recommendation made by a third party, DISTRICT will provide to FA written direction to do so as well as any Data it has received from such third party relating to its recommendation. DISTRICT acknowledges and agrees that while FA is relying on the Data in connection with its provision of the services under this Agreement, FA makes no representation with respect to and shall not be responsible for the accuracy or completeness of such Data.

## **VIII. 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:

### **UNIVERSITY PARK RECREATION DISTRICT**

Blalock Walters, P.A.  
802 11<sup>th</sup> Street West  
Bradenton, FL 34205  
Attention: Mark Barnebey

### **FA**

Fishkind & Associates, Inc.  
12051 Corporate Boulevard  
Orlando, FL 32801  
Attention: Hank Fishkind, President

## **IX. TITLE TRANSFER**

All materials, except functioning or dynamic financial models, prepared by FA pursuant exclusively to this Agreement shall be the property of the DISTRICT. Subject to the exception described above, upon termination of this Agreement, at DISTRICT's reasonable request no later than three (3) years after the termination of this Agreement FA

shall deliver to the DISTRICT copies of any materials or documents pertaining to or prepared in accordance with this Agreement.

#### **X. FA'S REPRESENTATIVES**

##### **1. Assignment of Named Individuals**

Professional employees of FA will provide the services set forth in this Agreement and FA may, from time to time, supplement or otherwise amend the team members. The individual listed below shall be the engagement manager for this Agreement.

Hank Fishkind, Ph.D.

##### **2. Changes in Staff Requested by the DISTRICT**

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

#### **XI. INSURANCE**

FA shall maintain insurance coverage with policy limits not less than as stated in Exhibit C.

#### **XII. LIMITATION OF LIABILITY**

Except to the extent caused by willful misconduct, bad faith, gross negligence or reckless disregard of obligations or duties under this Agreement on the part of FA or any of its associated persons, neither FA nor any of its associated persons shall have liability to any person for (i) any act or omission in connection with the performance of its services hereunder; (ii) any error of judgment or mistake of law; (iii) any loss arising out of any issuance of municipal securities, any municipal financial product or any other financial product, or (iv) any financial or other damages resulting from DISTRICT's election to act, or not to act, contrary to or upon any advice or recommendation provided by FA to DISTRICT.

#### **XIII. INDEPENDENT CONTRACTOR; NO THIRD-PARTY BENEFICIARY**

FA, 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 DISTRICT by virtue of this Agreement or any actions or services rendered under this Agreement. Nothing in this Agreement is intended or shall be construed to give any person, other than the Parties hereto, their successors and permitted assigns, any legal or equitable rights, remedy or claim under or in respect of this Agreement or any provisions contained herein. In no event will FA be liable for any act or omission of any third party or for any circumstances beyond FA's reasonable control including, but not limited to, fire, flood, or other natural disaster, war, riot, strike, act of terrorism, act of civil or military authority, software and/or equipment failure, computer virus, or failure or interruption of electrical, telecommunications or other utility services.

#### **XIV. APPLICABLE LAW**

This Agreement shall be construed, enforced, and administered according to the laws of the State of Florida. FA and the DISTRICT agree that, should a disagreement arise as to the terms or enforcement of any provision of this Agreement, each party will in good faith attempt to resolve said disagreement prior to pursuing other action.

#### **XV. ENTIRE AGREEMENT; SEVERABILITY**

This Agreement represents the entire agreement between DISTRICT and FA and may not be amended or modified except in writing signed by both parties. For the sake of clarity, any separate agreement between DISTRICT and an affiliate of FA shall not in any way be deemed an amendment or modification of this Agreement. This Agreement supersedes all prior agreements, contracts, arrangements, or communications between the parties with respect to the subject matter addressed herein, whether oral or written. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

#### **XVI. EXECUTION; COUNTERPARTS**

Each party to this Agreement represents and warrants that the person or persons signing this Agreement on behalf of such party is authorized and empowered to sign and deliver this Agreement for such party. This Agreement may be signed in any number of counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same document.

#### **XVII. PUBLIC RECORDS DISCLOSURE.**

FA understands and agrees that all documents of any kind provided to the DISTRICT in connection with this Agreement may be public records, and, accordingly, FA agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, Florida Statutes. Consultant acknowledges that the designated public records custodian for the DISTRICT is Fishkind & Associates, Inc. ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the FA shall 1) keep and maintain public records required by the DISTRICT to perform the service; 2) upon request by the Public Records Custodian, provide the DISTRICT with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the Agreement term and following the Agreement term if the FA does not transfer the records to the Public Records Custodian of the DISTRICT; and 4) upon completion of the Agreement, transfer to the DISTRICT, at no cost, all public records in FA's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the FA, the FA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored

electronically must be provided to the DISTRICT in a format that is compatible with Microsoft Word or Adobe PDF formats.

**IF THE FA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**FISHKIND & ASSOCIATES, INC.  
12051 CORPORATE BOULEVARD  
ORLANDO, FL 32801  
ATTENTION: HANK FISHKIND, PRESIDENT**

***[Signature Page Follows]***

IN WITNESS THEREOF, the DISTRICT and FA have executed this Agreement as of the day and year herein above written.

**UNIVERSITY PARK RECREATION DISTRICT**

By: Robert L. Wood  
Name: ROBERT L. WOOD  
Title: CHAIR  
Date: \_\_\_\_\_

**FA**

By: Henry H. Fishkind  
Name: HENRY H. FISHKIND  
Title: President  
Date: 1/11/19

**EXHIBIT A**  
**SCOPE OF SERVICES**

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

- Assist with the formulation of the DISTRICT's special assessment methodology or similar security for debt issuance in consultation with the DISTRICT's counsel, consulting engineer, bond counsel, and other consultants and professionals; notwithstanding the foregoing, these services shall not include the preparation of an assessment methodology report.
- Assist the DISTRICT 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 DISTRICT with savings.
- Analyze future debt capacity to determine the DISTRICT's ability to raise future debt capital.
- Assist the DISTRICT in the development of the DISTRICT's Capital Improvement Program by identifying sources of capital funding.
- Assist the DISTRICT with the development of the DISTRICT's financial planning efforts and process by assessing capital needs, identifying potential revenue sources, analyze financing alternatives such as pay-as-you-go, lease/purchasing, short-term vs. long-term 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 long-term capital planning which provide for inputs regarding levels of non-ad valorem special assessment and other revenues growth rates by 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 DISTRICT.

- Conduct strategic modeling and planning and related consulting.
- Attend meetings with DISTRICT's staff, consultants and other professionals and the DISTRICT.
- Undertake financial planning and policy development assignments made by the DISTRICT regarding financings, and financial policy including budget, tax, cash management issues and related fiscal policy and programs.
- Assist the DISTRICT in preparing financial presentations for public hearings and/ or referendums.
- Provide special financial services as requested by the DISTRICT.

2. Services Related to Debt Transactions (Includes short term financings, notes, loans, letters of credit, line of credit and bonds); provided that if the transaction is competitive, the services of the financial advisor will reflect that process. Upon the request of the DISTRICT:

- Analyze financial and economic factors to determine if the issuance of bonds is appropriate.
- Develop a financing plan in concert with DISTRICT's staff which would include recommendations as to the timing and number of series of bonds to be issued.
- Assist the DISTRICT 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 DISTRICT.
- 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 DISTRICT the overall presentation to rating agencies.

- Review underwriter's proposals and submit a written analysis of same to the DISTRICT.
- Assist the DISTRICT 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 indentures, resolutions or other governing documents regarding security, creation of reserve funds, flow of funds, redemption provisions, additional parity debt tests, etc.; review and comment on successive drafts of bond governing documents.
- Review the requirements and submit analysis to bond insurers, rating agencies and other professionals as they pertain to the DISTRICT's obligation.
- Review the terms, conditions and structure of any proposed debt offering undertaken by the DISTRICT and provide suggestions, modifications and enhancements where appropriate and necessary to reflect the constraints or current financial policy and fiscal capability.
- Coordinate with DISTRICT's staff and other advisors as respects the furnishing of data for offering documents, it being specifically understood that FA is not responsible for the inclusion or omission of any material in published offering documents.
- As applicable, advise the DISTRICT 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 DISTRICT in negotiations with investment banking groups regarding fees, pricing of the bonds and final terms of any security offering, and make 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.
- Assist and advise the DISTRICT with investment of proceeds of debt offerings

3. **Special Services.** Upon request of the DISTRICT:

FA 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. Investment advisory services (services to be provided by an affiliate of FA under separate agreement between the DISTRICT and such affiliate)
9. Arbitrage and rebate services (services to be provided by an affiliate of FA under separate agreement between the DISTRICT and such affiliate)
10. Financial analysis of projects being developed by engineer/architect studies
11. Negotiate on behalf of the DISTRICT for proposed projects

**EXHIBIT B**  
**COMPENSATION FOR SERVICES SUBJECT TO NEGOTIATION**

<u>Description</u>	<u>Unit Price</u>
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**TRANSACTIONAL FEE SCHEDULE**

	<b>Investment Grade</b>	<b>Non-investment Grade</b>
<b>A. Conventional Long-Term Fixed Rate Debt</b>		
Up to \$25 Million	<u>\$1.00/ \$1,000</u>	<u>\$1.00/ \$1,000</u>
\$25 Million up to \$50 Million	<u>\$0.85/ \$1,000</u>	<u>\$1.00/ \$1,000</u>
Over \$50 Million up to \$75 Million	<u>\$0.75/ \$1,000</u>	<u>\$0.85/ \$1,000</u>
Over \$75 Million	<u>\$0.50/ \$1,000</u>	<u>\$0.75/ \$1,000</u>
Above Fees Subject To:		
Minimum	<u>\$20,000.00</u>	<u>\$25,000.00</u>
Maximum	<u>\$125,000.00</u>	<u>\$200,000.00</u>
Additional Fee – Refunding Transaction	\$ <u>N/A</u> (excluding escrow structuring if requested)	

**B. Notes, Including but not Limited to TANS and RANS** \$15,000.00<sup>1</sup>

<sup>1</sup>Fee for investment grade, publicly offered issues; fee for private placement or non-investment grade public offering will be negotiated prior to the sale.

**NON-TRANSACTIONAL FEE SCHEDULE**

**C. Professional Fees**

Managing Director	<u>\$300.00/ Hour</u>
Senior Managing Consultant (other senior staff)	<u>\$250.00/ Hour</u>
Senior Analyst (Analyst)	<u>\$150.00/ Hour</u>
Administrative Staff	<u>\$0.00 / Hour</u>

**D. Out of Pocket Expenses**

Not to Exceed	<u>\$2,000.00</u> per Issue*
Travel	At Cost
Lodging	At Cost
Meals	At Cost
Postage	At Cost
Telephone	At Cost
Copies	0.10 Black & White; 0.50 for Color
Printing	0.10 Black & White; 0.50 for Color

\*FA also offers a flat "overhead" fee of \$1,500 per financing to cover all typical expenses (copies, printing, in state travel, etc). Both structures exclude New York and other out of state travel, which is billed at cost.

### **Other Services**

In addition to advising on bond transactions, FA is often called upon to perform many additional duties. These may include structuring and implementation of the refunding escrow, debt service reserve and debt service payment fund investment structuring, arbitrage rebate compliance, investment agreement and float contract bidding, investment liquidation, interest rate swap pricing and implementation, and other related services. These services would be provided via separate contract with the appropriate FA related entity such as FA Asset Management, LLC. If needed or required under this proposal, these services are subject to a separate fee to be negotiated in advance at the time of the service. FA fully discloses all fees related to any transaction.

## **EXHIBIT C** **INSURANCE**

Fishkind & Associates, Inc. ("FA") has a complete insurance program, including property, casualty, comprehensive general liability, automobile liability and workers compensation. FA maintains professional liability and fidelity bond coverages which total \$30 million and \$10 million, respectively. FA also carries a \$10 million cyber liability policy.

Our Professional Liability policy is a "claims made" policy and our General Liability policy claims would be made by occurrence.

### **Deductibles/SIR:**

Automobile \$250 comprehensive & \$500 collision

Cyber Liability \$50,000

General Liability \$0

Professional Liability (E&O) \$1,000,000

Financial Institution Bond \$75,000

### **Insurance Company & AM Best Rating**

Professional Liability (E&O)	Endurance American Specialty Insurance; (A+; XV) XL Specialty Insurance Company; (A; XV) Continental Casualty Company; (A; XV) Starr Indemnity & Liability Company; (A; XIV)
Financial Institution Bond	Federal Insurance Company; (A++; XV)
Cyber Liability	Indian Harbor Insurance Company (A; XV)
General Liability	Great Northern Insurance Company; (A++; XV)
Automobile Liability	Federal Insurance Company; (A++; XV)
Excess /Umbrella Liability	Federal Insurance Company; (A++; XV)
Workers Compensation & Employers Liability	Great Northern Insurance Company; (A++; XV)