

**TOWN OF FAIRFAX  
STAFF REPORT**

**To: Mayor, Members of the Town Council**  
**From: Michael Vivrette, Finance Director**  
**Date: November 7, 2012**  
**Subject: Adoption of Resolutions 12-68 and 12-69 Authorizing Wulff Hansen & Co. to provide Investment Banking/Underwriting Services as Financial Advisor for the Town of Fairfax**

**RECOMMENDATION**

Staff recommends that Council adopt the attached resolutions appointing Wulff Hanson & Co. as Financial Advisor and as Investment Banker for the purpose of helping to obtain short term financing.

Adopt Resolution No. 12-68 authorizing the execution of an agreement with Wulff Hansen & Co. to provide services as Financial Advisor to the Town.

Adopt Resolution No. 12-69 authorizing the execution of an agreement with Wulff Hansen & Co. to provide Investment Banker/Underwriter to the Town of Fairfax.

**DISCUSSION**

Town staff is exploring the possibility of obtaining a line-of-credit or short-term TRAN (Tax Revenue Anticipation Note) to assure that there will be adequate cash on hand to carry the Town through the receipt of property tax revenues in mid -December. Recent capital improvement expenditures for road work on Sir Francis Drake Blvd. have drawn available cash reserves down. The Town did a similar arrangement last year with the County and borrowed \$1,000,000 in August, 2011 which was paid back in May, 2012.

Mark Pressman of Wulff Hansen & Co will be assisting us in obtaining short term financing, beginning with discussions with the County. In order for the Town to receive continued analytical services from Wulff Hansen & Co in areas of public finance that are not specific to a transaction, the City will need to execute a financial advisory agreement that is supplemental to the investment banking/underwriting agreement. Compensation under this agreement is addressed in the investment banking/underwriting agreement or will be as negotiated between the Town and Wulff Hansen & Co.

**ATTACHMENTS**

Resolutions (2)  
Investment Banking Agreement  
Financial Advisory Services Agreement

**RESOLUTION NO. 12-68**

**A RESOLUTION OF THE TOWN COUNCIL APPOINTING WULFF HANSEN & CO. TO PROVIDE SERVICES AS FINANCIAL ADVISOR TO THE TOWN OF FAIRFAX**

**WHEREAS**, the Town of Fairfax has on occasion explored various financing strategies and possibilities or performed follow up on existing financing transactions, all of which is unrelated to a prospective transaction; and

**WHEREAS**, the Town of Fairfax may find it advantageous or desirable to do the same in the future; and

**WHEREAS**, when needed, the Town of Fairfax has utilized the services of Wulff, Hansen & Co, or its current staff for prior financing needs; and

**WHEREAS**, the Town wishes to maintain continuity in its public financing programs and Wulff Hansen & Company can provide assistance to the Town in that regard.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Fairfax that Wulff, Hansen & Co., San Francisco, California, is hereby designated to serve as financial advisor to the Town in connection with its public financing that is unrelated to a specific transaction during the term of an Agreement to be executed by the Town and Wulff, Hansen & Co; and

**BE IT FURTHER RESOLVED** that the Town Manager is hereby authorized and directed in the name of and on behalf of the Town to execute an Agreement for Financial Advisory Services and any Addenda with such firm; and

**BE IT FURTHER RESOLVED** that the Town Manager is hereby authorized and directed to take such action and to execute such documents as may be necessary or desirable to effectuate the intent of this Resolution; and

**BE IT FURTHER RESOLVED** that this Resolution shall take effect upon its adoption by this Council.

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The foregoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 7th day of November, 2012, by the following vote to wit:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Pam Hartwell-Herrero, Mayor

Attest:

\_\_\_\_\_  
Town Clerk

**FINANCIAL ADVISORY SERVICES AGREEMENT  
TOWN OF FAIRFAX – WULFF, HANSEN & CO.**

This is an agreement between the Town of Fairfax, a municipal corporation of the State of California, referred to as "Town", and Wulff, Hansen & Co. ("Wulff Hansen"), an Investment Banking and Municipal Financial Advisory firm registered as a broker/dealer and Municipal Financial Advisor with the Securities and Exchange Commission and the State of California, and a member of the Financial Industry Regulatory Town ("FINRA"), with its headquarters office in San Francisco, California, referred to as "Advisor", (together the "Parties") for performing certain Municipal Financial Advisory Services ("Services") as set forth herein and consists of the following terms and conditions (the "Agreement"). Town has previously been informed, and understands and acknowledges, that any information or services provided by Wulff, Hansen pursuant to this Agreement are for the purpose of serving as Municipal Financial Advisor to the Town and not as an Underwriter or otherwise facilitating the private placement of municipal securities or loans issued by the Town. Services provided under this Agreement are solely as Municipal Financial Advisor or fiduciary to the Town regardless of whether Wulff, Hansen has acted or is currently acting on its own behalf as underwriter or placement agent on a transaction not subject to this Agreement.

This Agreement between the Parties is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_ 2012. The term of this Agreement shall extend to midnight, December 31, 2014.

**1.0 Services of Advisor**

1.1 Advisor agrees to perform the following Services, as appropriate, for the Town during the term of this Agreement. References to Town include any of its agencies or districts where members of the Town Council sit on the board of directors.

- (a) Attendance at public meetings of Town at which matters relating to the Services are considered, except routine matters, including informational and educational meetings with the public;
- (b) Attendance at Town staff meetings, or meeting with members of the public on matters relating to the Services, upon the request of the Town after reasonable notice;
- (c) Work with members of the public, other public agencies, Town staff, and Town Council members to learn, discuss and respond to matters relating to the Services; and to develop and coordinate recommendations acceptable to interested parties, Town and its consultants.
- (d) Assist the Town in its selection of other professionals (e.g., outside counsel, consultants, accountants, engineers, and others as appropriate), if requested;
- (e) Prepare a Distribution List with contact information on all relevant participants in a project and a Schedule indicating timing for significant steps in the process;
- (f) Assist any of the Town's staff and/or special consultants in developing specific terms and conditions affecting a project so as to best reflect the Town's priorities and interests;
- (g) Preparation of Cash Flow analysis and other schedules per Town direction and related consultation;
- (h) If requested, assistance in developing supportive financial material and resource information for an Town election;
- (i) Telephone consultation with staff members and property owners to answer questions about a project and related matters;
- (j) If requested, assist the Town in developing a comprehensive long term financial plan and strategies, particularly related to assessing capital needs associated with the Town's General Plan; including development of certain aspects of an overall financial plan, not necessarily directly related to specific underwritings or public financings, such as Capital Improvement Plan or development impact fees;
- (k) Assist in developing and reviewing all financial plans related to development/real estate finance, whether submitted by developers or developed in-house;

- (l) Assist the Town in efforts to maintain or improve the Town's underlying credit rating, including preparation of materials, presentation to and coordination with credit rating agencies.
- (m) Long term evaluation, preparation, coordination and oversight of the Town's public financing program.
- (n) Provide ongoing follow up consultation relating to public financing, as necessary, and coordination with other prospective Town projects.
- (o) Advisor agrees to assist Town, if requested, in coordinating existing debt obligations with prospective financing plans, including assisting with development of certain aspects of long range comprehensive planning;

1.2 The Services of Advisor under this Agreement shall not include the following;

- (a) Legal services of any kind (including bond and disclosure counsel);
- (b) Engineering services of any kind;
- (c) Special Tax Rate Consulting;
- (d) Absorption Analysis;
- (e) Fiscal Consulting;
- (f) Underwriting or placement agent

Upon request by Town, Advisor may provide services in paragraph 1.2(c) if specifically designated as services performed and compensated outside of and separately from this Agreement.

1.3 The Town and Advisor have entered into a separate agreement wherein Wulff Hansen will provide underwriting or placement agent services ("Underwriting Services Agreement") to the Town for specific negotiated bond financing transactions of or within the Town. Said underwriting or placement agent services will not include Services referenced in this Agreement and therefore, compensation for said underwriting or placement agent services will be by separate contract between the Parties. Town understands and agrees that services provided under the Underwriting Services Agreement are separate from and outside the scope of this Agreement, and that when acting as Underwriter/Placement agent or in a similar capacity, Wulff, Hansen will be acting on its own behalf in a commercial, arms' length transaction and not as a Municipal Financial Advisor or fiduciary to Town regardless of whether Wulff, Hansen has acted or is currently acting as such on an unrelated matter pursuant to this Agreement. Information and services provided to Town by Wulff, Hansen when acting as Underwriter/Placement Agent for a securities transaction are not intended to be and should not be construed as "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934 and Wulff, Hansen encourages Town to consult with its legal, accounting, tax, financial and other advisors, as applicable, to the extent it deems appropriate.

## **2.0 Town Responsibility**

In consideration of the agreement of Advisor to provide the Municipal Financial Advisory Services set forth in paragraph 1.0, Town agrees as follows:

2.1 Town will work with Advisor exclusively during the term of this Agreement with respect to municipal financial advisory services rendered through this Agreement and each related project during the term hereof unless other arrangements are mutually agreed to in writing by the Parties.

2.2 Town will cooperate with Advisor in all respects relating to the Services being rendered by Advisor in connection with each proposed project and will assist Advisor in obtaining information regarding the projects and will provide said information to the extent practicable. Town is responsible for the content and accuracy of information it provides to Advisor and Advisor is not expected to or responsible to independently verify such information prior to its inclusion in documents or other materials disseminated through Advisor.

## **3.0 Advisor's Responsibility**

3.1 It is understood and agreed that Advisor has the professional skills necessary to provide Services to Town, and that Town relies upon the professional skills of the Advisor to do and perform the Services in a skillful and professional manner in accordance with the standards of the profession.

3.2 Advisor agrees to perform the Services in a timely manner. Advisor shall not be held responsible for delays caused by circumstances beyond its reasonable control.

3.3 Nothing herein contained shall prevent Advisor from carrying on its usual business activities of municipal financial advisory and investment banking, including the performance of other additional services for the Town by separate agreement, should the Town request such additional services, nor from performing similar services for other agencies, cities, districts or other public entities, provided no actual or apparent conflict of interest arises. Such occasion of actual or apparent conflict of interest shall require full disclosure by the Advisor to the Town and Advisor shall not pursue any activity that represents such a conflict without the Town's written authorization.

3.4 The Town, public agencies, landowners, consultants and other parties dealing with Town or otherwise involved in the preparation of information and documents referenced in Paragraph 1.0 of this Agreement will be furnishing to Advisor various data, reports, studies, computer printouts and other information and representations as to facts involved in the Services which Town understands Advisor will be using and relying upon in preparing the reports, studies, computer printouts, and other work products called for in this Agreement. Advisor shall not be obligated to establish or verify the accuracy of such information furnished by or on behalf of Town, nor shall Advisor be responsible for the impact or effect on its work products of the information furnished by or on behalf of Town, in the event that such information is in error and therefore introduces error into Advisor's work product.

#### 4.0 Compensation

4.1 Fee compensation to Advisor in connection with this Agreement will be paid by Town upon submission of an invoice by Advisor for Services described above after successful completion of the sale of Bonds. No fee compensation shall be due Advisor if the Bond sale is not completed, or if Bonds fail to be sold at competitive or negotiated sale, except as described in paragraph 11 of this Agreement.

Advisor's fee for Services described above is set forth below.

For each series of Bonds sold:	\$30,000 for the first \$3 million, plus
	\$7,500 for any portion of the next \$2 million, plus
	\$7,500 for any portion of each additional \$2 million

Town is not required to pay Advisor a retainer or other initial fee under this Agreement. Any municipal financial advisory services – but not underwriting or placement agent services - requested of Wulff Hansen by Town that are outside the scope of this Agreement shall be paid at the following hourly rates, or as otherwise mutually agreed to by the Parties.

##### Hourly Rates:

Principals.....	\$350 per hour
Associates.....	\$200 per hour
Support.....	\$75 per hour
Computer Analysis.....	\$300 per hour
Direct Expenses.....	...At actual cost

4.2 Advisor acknowledges and agrees that the compensation to be paid to Advisor under this Section 4.0 represents the full amount due and owing to Advisor in connection with the Services provided for each project.

4.3 With the exception of Services referenced in paragraphs 1.2 and 1.3, or for other services outside the scope of this Agreement which must be arranged separately, where Town wishes to use Advisor's services relating to a specific project unrelated to this Agreement, Advisor's compensation shall be based on the hourly rates set forth in Paragraph 4.1, or as otherwise mutually agreed between the Parties.

4.4 Amendments. In the event Town desires to retain Advisor for the performance of additional services, or wishes to delete any Services in connection with this Agreement, specifications of such changes and adjustments to compensation due Advisor therefore shall be made only by written and signed amendment to this Agreement by both Parties. However, for so long as the Underwriting Services Agreement is in effect, no amendment to this Agreement will be made which would obligate or allow Advisor to provide any municipal financial advisory services with regard to a transaction subject to the Underwriting Services Agreement.

## **5.0 Expenses**

5.1 Whether or not Bonds are sold, Town shall reimburse Advisor for all reasonable out of pocket expenses including conference calls, Federal Express, photographic work, reproductions, reporting, copying and mailing costs necessary to perform services on behalf of Town as specified above. Further, Advisor shall not be responsible for costs of, and shall be reimbursed for, preparation, production and printing of disclosure documents, computer analysis, bidding documents and any other costs or reproduction, mailing, clerical services or other costs associated with sale of the Bonds, and any public hearings or Town dissemination of Advisor's work product. Costs associated with outside vendors of services arranged for by Advisor on behalf of Town, such as rating agencies, computer analysis, credit enhancement, reporting agencies will also be the responsibility of Town.

With the exception of computer analysis which may, with Town's prior approval, be subcontracted to an unrelated third party for not more than \$3,500 per project, Advisor shall not charge Town for any administrative expenses or overhead, including without limitation, facsimile, conference calls, mileage and/or any other expenses incurred by Advisor in connection with Advisor's provision of Services without prior written consent of the Town.

5.2 It is understood and agreed that Town shall pay any fees or expenses or other compensation due Advisor for Services provided by Advisor to Town under this Agreement within 30 days of Advisor's submission of an invoice to Town.

## **6.0 Purpose of Agreement**

6.1 Over the past several years, significant planning, effort and progress has occurred by the Town to fund public infrastructure and needed public facilities within its jurisdiction. The financial planning component is part of a long term Town program to achieve such objectives. The financial planning component is complicated and necessarily intricately linked with other Town needs and objectives. Recognizing the complexity of the financial planning component, the Town wishes to continue the Services of Advisor to assure continuity and coordination of the Town's financing plans with the implementation of its other objectives.

## **7.0 Primary Contact**

7.1 The lead representative of Advisor will be Mark Pressman who will be responsible for all communications and interaction with the Town and others involved in the provision of Services.

7.2 If Town requests other services from Wulff Hansen, separate from this Agreement and the Underwriting Services Agreement, the primary representative of Advisor responsible for providing Consulting Services to the Town may be someone other than Mark Pressman, as mutually agreed with the Town.

## **8.0 Certification – Conflicts**

8.1 Advisor certifies that, except as described in Section 8.2 or elsewhere in this Agreement, it has no interest and shall not acquire any interest, direct, indirect or contingent, that would conflict in any manner or degree with the performance of the Services hereunder, except as Advisor under this Agreement, or in any property or contract arising from or affected by Services with the Town. Advisor further covenants that in the performance of this Agreement, no persons having any such undisclosed conflict or interest shall be employed.

8.2 Both Parties understand and agree that this Agreement and the Municipal Financial Advisory Services to be provided hereunder are not intended to relate to underwriting or placement agent services that may be provided by Wulff, Hansen for securities issued by the Town under the Underwriting Services Agreement. Nevertheless, both Parties understand that the existence of the Underwriting Services Agreement presents a potential conflict of interest for Advisor. In order to mitigate this potential conflict and allow Advisor to provide the Services without regard to its own interests, Town will not request, and even if so requested, Advisor will not provide, any Services under this Agreement with regard to a transaction subject to the Underwriting Services Agreement.

8.3 No officer, member, or employee of Town and no member of the governing body of Town who exercises any functions or responsibilities in the review, approval of the undertaking or carrying out of the Services, shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he/she is, directly or indirectly interested; nor shall any such officer, member or employee of Town have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## **9.0 Nondiscrimination**

9.1 There shall be no discrimination against any Advisor employee who is employed to perform or assist in providing the Services, or against any applicant for such employment because of race, religion, color, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## **10.0 Hold Harmless and Indemnification**

10.1 Advisor shall indemnify, defend and save Town, its officers, elected and appointed officials, employees, contractors and agents harmless from and against any and all liability, claims, suits, actions, damages and/or causes of action of any kind arising out of any bodily injury, personal injury, property damage or in violation of any federal, state or municipal law or ordinance or other cause in connection with the activities of Advisor, or on account of the performance or character of the Services or otherwise related to its performance of this Agreement to the extent that any such liability, claims, suits, actions, damages and/or causes of action arises out of the negligent or willful misconduct of the Advisor.

10.2 Town will indemnify and hold Advisor harmless from any claims, suits, actions, damages and/or causes of action of any kind arising from errors contained in data or information furnished by Town or Town's designee to Advisor for use in carrying out the Services called for by this Agreement.

## **11.0 Termination of Agreement**

11.1 This Agreement shall become effective on the date stated herein and will continue until the earlier of (i) the date of termination shown in the preamble of this Agreement or (ii) termination as provided for in this paragraph 11.0, and all proper invoices have been rendered and paid. This Agreement may be extended by mutual agreement of the Parties in writing.

11.2 In the event that Advisor has provided Services and/or incurred expenses pursuant to the terms of this Agreement, and Town finds it necessary to discontinue the Services of Advisor and terminate this Agreement for reasons other than those set forth in paragraph 11.3 below, the Town agrees to compensate Advisor for Services performed and expenses incurred through the date of said termination at the rates as applicable in paragraph 4.1.

Town recognizes that Advisor, by the nature of this Agreement, does not intend to keep detailed records of hours devoted to the Services, and therefore Town agrees to accept Advisor's good faith estimate of time devoted to Services on behalf of the Town, should the need arise.

11.3 Notwithstanding the terms of paragraph 11.1, this Agreement may be terminated by the Town for cause based on the following activities of Advisor: loss of registration or membership as set forth in the preamble paragraph of this Agreement, malfeasance.

Termination of the Agreement for cause as set forth in this paragraph shall relieve Town from compensating Advisor in accordance with paragraph 4.0 of this Agreement.

11.4 Payment for Services and expenses of Advisor as set forth in paragraph 4.0, shall be paid within thirty (30) days of submission of an invoice to Town by Advisor.

11.5 If Advisor and Town are working on particular project, Town may give written notice of termination to Advisor with regard to other prospective Town projects that will terminate the Agreement upon the latter of (a) completion of the project upon which Advisor and Town are then working, or (b) thirty (30) days after the notice.

## **12.0 Assignment**

12.1 Advisor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of Town.

**13.0 Insurance**

13.1 Workers' Compensation and Employers' Liability. Advisor shall obtain and maintain, at Advisor's sole cost and expense, for the term of the Agreement and any extension thereof a Workers' Compensation and Employers' Liability Insurance policy, written in accordance with the laws of the State of California, covering any and all employees of Advisor. This policy shall provide for One Million Dollars (\$1,000,000) Employers' Liability coverage.

13.2 Automobile Liability. Advisor shall take out and maintain, at Advisor's sole cost and expense, for the term of the Agreement Comprehensive General Liability and Automobile Liability insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit applying to bodily injury, personal injury and property damage.

**13.3 Policy Requirements**

13.3.1 Additional Insureds. Town is to be covered as an additional insured as respects liability arising out of work or operations performed by or on behalf of the Advisor; or automobiles owned, leased, hired, or borrowed by the Advisor.

13.3.2 Primary Insurance. For any claims related to this Agreement or the work hereunder, the Advisor's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, or volunteers shall be in excess of the Advisor's insurance and shall not contribute with it.

**14.0 Classification of Relationship**

14.1 It is expressly understood and agreed and Town hereby recognizes that in providing Services under this Agreement Advisor is acting as an independent contractor of the Town. Nothing herein shall be construed to make the Advisor an employee, common law employee, agent or servant of the Town. Advisor shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding and Social Security. Advisor acknowledges and agrees that he/she is not entitled to the benefits of civil service status and/or the rights and privileges enjoyed by civil service employees and Advisor hereby waives any and all claims to such rights and/or privileges.

WHEREFORE, the Parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_ 2012.

WULFF, HANSEN & CO.

BY: \_\_\_\_\_  
Christopher Charles, President

TOWN OF FAIRFAX

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**RESOLUTION NO. 12-69**

**A RESOLUTION OF THE TOWN COUNCIL APPOINTING WULFF HANSEN & CO. TO  
PROVIDE SERVICES AS INVESTMENT BANKER/UNDERWRITER  
TO THE TOWN OF FAIRFAX**

**WHEREAS**, the Town of Fairfax has on occasion issued new or refunded various forms of public financing to serve the public interest; and

**WHEREAS**, the Town of Fairfax may find it advantageous or desirable to issue new or refund existing public financing in the future; and

**WHEREAS**, when needed, the Town of Fairfax has utilized the underwriting and investment banking services of Wulff, Hansen & Co, or its current staff for its previous financing needs; and

**WHEREAS**, the Town wishes to maintain continuity in its public financing program and Wulff Hansen & Company can provide assistance to the Town in that regard.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Fairfax that Wulff, Hansen & Co., San Francisco, California, is hereby designated to serve as investment banker/underwriter to the Town in connection with all of its public financing transactions during the term of an Agreement to be executed by the Town and Wulff, Hansen & Co; and

**BE IT FURTHER RESOLVED** that the Town Manager is hereby authorized and directed in the name of and on behalf of the Town to execute an Agreement for Investment Banking/Underwriting Services and any Addenda with such firm; and

**BE IT FURTHER RESOLVED** that the Town Manager is hereby authorized and directed to take such action and to execute such documents as may be necessary or desirable to effectuate the intent of this Resolution; and

**BE IT FURTHER RESOLVED** that this Resolution shall take effect upon its adoption by this Council.

\*\*\*\*\*

The foregoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 7th day of November, 2012, by the following vote to wit:

AYES:

NOES:

ABSENT:

Attest:

\_\_\_\_\_  
Pam Hartwell-Herrero, Mayor

\_\_\_\_\_  
Town Clerk

**INVESTMENT BANKING AGREEMENT  
TOWN OF FAIRFAX – WULFF, HANSEN & CO.**

**Preamble:**

This is an agreement between the Town of Fairfax, a municipal corporation of the State of California, referred to as "Town", and Wulff, Hansen & Co. ("Wulff, Hansen", "Investment Banker"), an investment banking firm registered as a broker/dealer with the Securities and Exchange Commission and the State of California and a member of the Financial Industry Regulatory Authority "FINRA", with its headquarters office in San Francisco, California, referred to as "Investment Banker", for performing Underwriting and/or Placement Agent services ("Services") leading to negotiated sale of public financing instruments to be issued by the Town of Fairfax or alternative types of financing such as loans ("Alternative Financing"), and consists of the following terms and conditions (the "Agreement"). Together, the Town and Wulff Hansen are referred to as the "Parties".

Town is aware that Wulff, Hansen is also registered with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board as a Municipal Financial Advisor, but that Wulff, Hansen will under no circumstances act as a Municipal Financial Advisor in connection with any transaction subject to this Agreement. Town has previously been informed, and understands and acknowledges, that any information or services provided by Wulff, Hansen pursuant to this Agreement are for the purpose of serving as an Underwriter or otherwise facilitating the placement of municipal securities or alternative types of financing issued by the Town. As an underwriter, placement agent, or in a similar role Wulff, Hansen will be acting on its own behalf in a commercial, arms' length transaction and not as a Municipal Financial Advisor or fiduciary to Town regardless of whether Wulff, Hansen has acted or is currently acting as such on an unrelated matter not subject to this Agreement. Information and services provided to Town by Wulff, Hansen in connection with this Agreement are not intended to be and should not be construed as "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934 and Wulff, Hansen encourages Town to consult with its legal, accounting, tax, financial and other advisors, as applicable, to the extent it deems appropriate.

This Agreement between the Parties is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_ 2012. The term of this Agreement shall extend to midnight, December 31, 2014, unless extended by mutual written consent of the Parties. This Agreement may be updated and modified during its term to conform to new interpretations/regulations resulting from the *Dodd-Frank* Wall Street Reform and Consumer Protection Act of 2009 or otherwise. Authorized representatives of the Parties must signify acceptance of such updates or modifications in writing and attach such updates or modifications as addenda ("Addenda") to this Agreement.

**1.0 Services of Investment Banker**

1.1 Investment Banker agrees to perform the following investment banking services in connection with preparing each negotiated sale (whether in one or more phases) of bonds including notes or other evidence of indebtedness, or certificates of participation in any lease sale or other obligation including refundings ("Bonds") or alternative forms of financing ("Alternative Financing") by the Town of Fairfax during the term of this Agreement (the entire process leading to funding of specific projects as referenced in this paragraph is referred to herein as "Public Financing"). Investment Banker also agrees to provide the same services, as appropriate, in connection with developing Alternative Financing such as may be available through commercial banks, or similar entities or agencies on behalf of Town if such financing is determined to be advantageous to the Town. Services may include:

- (a) Attendance at all public meetings of Town at which matters relating to a Public Financing are considered, except routine matters, after reasonable notice;
- (b) Attendance at Town staff meetings, or meeting with property owners relating to a Public Financing, upon the request of the Town after reasonable notice;
- (c) Work with affected property owners, Town staff, and Town Council members to conceive the structure, timing, terms, and other similar matters relating to a Public Financing; and coordinate a financing program acceptable to property owners, Town, Investment Banker, and investors.
- (d) Telephone consultation with staff members and property owners to answer questions about a Public Financing and related matters;

- (e) Conduct the Investment Banker's due diligence investigation relative to the Public Financing and Disclosure Documents (i.e., Official Statement, Offering Statement or memorandum, or similar document, hereinafter collectively referred to as "Disclosure Documents") and assist in the preparation of Disclosure Documents in conjunction with disclosure counsel, if appropriate, for each Public Financing for Town review and approval;
- (f) Assist the Town in its selection of professional advisors (e.g., bond counsel, special tax rate consultant, engineer of work) relative to the Public Financing, if necessary;
- (g) Assist the Town's bond counsel and any special advisors or consultants in structuring of the financing and recommending specific terms and conditions affecting the Public Financing;
- (h) Evaluation of need to obtain, and possibility of obtaining, credit enhancements and/or rating for a Public Financing;
- (i) At least one day prior to the submission of a formal offer to Town for purchase of Bonds, Investment Banker will indicate to Town the interest rate or rates, the purchase price to be paid to the Town, and the public offering price of the Bonds that Investment Banker then estimates will be included in an offer. Said terms will be accompanied by recent comparable sales of similar issues, if any, known to Investment Banker, and provided such information is available to Investment Banker, to clarify market levels of the Bond sale.
- (j) Arrangements for underwriting of the Bonds, at negotiated sale pursuant to paragraphs 3 and 4 below.

1.2 Investment Banker agrees to provide Town with the investment banking services set forth below:

- (a) Specific recommendations will be made regarding structuring debt issuance with debt-to-value ratios, reserve requirements, structuring alternatives, debt service coverage ratios, interest rates, maturity schedules, bond ratings, timing of sales, types of financing instruments, investment of proceeds, and other identified needs related to Public Financing.
- (b) Upon request, Investment Banker, as Placement Agent, will assist Town in pursuing Alternative Financing vs. Bond Financing for a specific Public Financing.

1.3 The services of Investment Banker under this Agreement shall specifically exclude the following:

- (a) Legal services of any kind;
- (b) Engineering services of any kind;
- (c) Disclosure counsel services;
- (d) Municipal Financial Advisory services.

1.4 Upon request of the Town, Wulff Hansen may provide Municipal Financial Advisory services to the Town relative to specific programs or projects of the Town unrelated to Public Financings subject to this Agreement and of such a nature as to present no conflict of interest in connection with Wulff, Hansen's duties under this Agreement. In such an event Wulff Hansen's compensation for such Municipal Financial Advisory Services shall be by separate agreement between Town and Wulff, Hansen. In no event will Wulff, Hansen provide Municipal Financial Advisory Services in connection with Public Financings subject to this Agreement.

## 2.0 Agreement of Town

In consideration of the Agreement of Investment Banker to provide the Investment Banking services set forth in paragraph 1.0, Town agrees as follows:

2.1 Town will work with Investment Banker exclusively during the term of this Agreement with respect to each Public Financing and each proposed Public Financing project during the term hereof unless other arrangements are mutually agreed to in writing by both parties.

2.2 Town will cooperate with Investment Banker in all respects relating to the services being rendered by Investment Banker in connection with each proposed Public Financing project and will assist Investment Banker in obtaining information regarding the Public Financing and will provide said information to the extent practicable.

2.3 Town understands that Investment Banker will be relying on various data, reports, studies, computer printouts, disclosure documents and other information and representations as to facts provided by Town and its attorneys, advisors and consultants and that Town is responsible for the content and accuracy of said information. Investment Banker is not expected to or responsible to independently verify such information prior to its inclusion in documents or other materials disseminated through Investment Banker.

2.4 During the term of this Agreement, Town will, where appropriate, encourage Public Financing within its jurisdiction and will negotiate the sale of and sell each issue of Bonds that results from such Public Financing exclusively to Investment Banker as described below.

2.5 When Alternative Financing for public facilities appears to be advantageous to the Town, Town will pursue such Alternative Financing using the services of Investment Banker to assist in obtaining such Alternative Financing.

2.6 Town will permit Investment Banker to participate in or erect signage at a site that is subject to a Public Financing project.

2.7 Town will work with Investment Banker in good faith to amend this Agreement as necessary so as to maintain compliance with requirements of the Dodd–Frank *Wall Street Reform and Consumer Protection Act of 2009* or other laws, rules or regulations which may become effective during the life of this Agreement.

### **3.0 Purchase and Sale of Bonds**

3.1 At the time designated by the Town for sale of a Bond issue during the term of this Agreement, Investment Banker, unless it believes in good faith that the Bonds are not marketable because of market conditions or other conditions beyond Investment Banker's control, will submit an offer to Town to purchase the Bonds, subject to pertinent resolutions, the Disclosure Documents, and all other necessary documents, approvals, and proceedings governing or relating to such Bonds having been determined by bond counsel, the Town and the Investment Banker to be satisfactory in all respects for financing purposes. The Investment Banker may, at its option, form a group of investment banking firms ("Underwriting Group") for the purpose of making the offer and underwriting and selling the Bonds, and references to Investment Banker herein will include such Underwriting Group as the context requires.

3.2 Provided the purchase price, interest rate, and public offering price are determined in good faith to be satisfactory to Town and to Investment Banker, Town will agree to sell to Investment Banker and Investment Banker will agree to purchase the Bonds on a mutually agreeable closing date at such price and interest rate for sale to the public at such public offering price, or at such other public offering price or prices as Investment Banker determines in good faith to be appropriate in view of market conditions and other factors affecting price at the time of the public offering; provided that Investment Banker will not be obligated to purchase the Bonds on the closing date if it determines in good faith that the Bonds are not marketable as a result of market conditions or because of conditions beyond the control of Investment Banker. If Investment Banker decides not to purchase the Bonds, Town shall be entitled to work with another underwriter of its choice in marketing the particular Bonds at issue. If Town does utilize another underwriter as herein provided, this shall not affect the terms and conditions of this Agreement in relation to other Bond sales or Public Financing projects during life of this Agreement.

3.3 For each separate Bond issue, the purchase price to be paid to the Town by the Investment Banker will be set so that the difference (i.e., underwriting discount) between the purchase price and the total principal amount of the Bonds being issued will be a percentage of that portion of the Bonds being sold. Said price will be determined for each Bond sale by negotiation in good faith between Investment Banker and the Town based on Investment Banker's time commitment, financing complexity and type of transaction involved, but in any case shall be no less than 2.00% of the par amount of the Bonds to be sold.

3.4 When Town utilizes the services of Investment Banker as set forth in this Agreement to obtain funding for public facilities through Alternative Financing, Town agrees to pay Investment Banker for its services in connection with the placement of Alternative Financing at a rate of not less than 2.00% of the transaction size from a Town source of funds which is mutually acceptable to Town and Investment Banker. Town understands that such payment generally cannot be paid directly from proceeds of Alternative Financing sources.

### **4.0 Investment Banking Compensation and Expenses**

4.1 Town shall be billed for and pay directly, whether or not Bonds are sold or delivered (unless payment of such fees and expenses is contingent on the Bonds being sold and delivered), and whether or not Alternative Financing is obtained, the fees and expenses of its legal counsel, bond counsel, special tax rate consultants, engineers, and any other experts retained by the Town or retained by

Investment Banker on behalf of the Town (e.g., bond paying agent, rating agencies, arbitrage calculations, opinion, etc.) unless the Town has otherwise directly agreed with such providers of services. The Town also shall be responsible to pay, whether or not the Bonds are sold or delivered, all costs customarily paid in connection with issuance of bonds or obtaining Alternative Financing, including printing the Bonds and other documents, including preparation and printing of the Disclosure Documents.

4.2 Contingent on the Public Financing being consummated by Investment Banker, Town will reimburse Investment Banker from the Bond proceeds or other Town sources of funds for Investment Banker's direct out-of-pocket costs and expenses incurred in rendering the services described in this Agreement in connection with each Public Financing including but not limited to those set forth below. Said costs and expenses exclusive of items 7, 8 and 9 below are estimated to be less than \$5,000 per Public Financing depending on funding size (subject to normal inflationary increases during the term of this Agreement):

1. Transportation, meals, and lodging;
2. Long distance telephone calls;
3. Photocopying;
4. Facsimile transmission;
5. Photographic work;
6. Regulatory Agency Fees, except those for which reimbursement is prohibited;
7. Numerical Analysis;
8. Preparation and printing of Bond Disclosure Documents; and
9. Investment Banker's Counsel (if necessary).

4.3 Reimbursement for costs is payable on funding of Public Financing, subject to Investment Banker's submission of an itemized invoice.

4.4 It is understood and agreed that Town shall not be required to pay a fee or other compensation to Investment Banker for services provided by investment Banker to Town under this Agreement except with regard to Alternative Financing as specified in paragraph 3.4. It is understood that Investment Banker's compensation or profit from Bond issues sold by the Town under the terms of this Agreement is to come from the difference between the price paid to the Town for each issue of Bonds and the public offering price thereof and that for services performed under Section 3.3 of this Agreement, Investment Banker will receive no additional fee or other compensation from the Town. It also is understood and agreed that Town will not reimburse Investment Banker's direct out-of-pocket costs for a Public Financing transaction unless the Public Financing proceeds are available to the Town.

## **5.0 Purpose of Agreement**

5.1 Over the past decade, several Public Financing projects have occurred in the Town to fund public infrastructure and public facilities within its jurisdiction. Investment Banker or its current staff have worked with the Town during the past 10 years providing services of the type discussed in this Agreement. With this history, Investment Banker is uniquely qualified to continue providing underwriting and placement agent services in connection with the Town's long term Public Financing and maintain continuity through changes in staff and Council which may occur over time. This Agreement is meant to provide the Town with ready access to Investment Banker's experience and knowledge in underwriting or placing Public Financings. Recognizing the complexity of the Town's existing Public Financing, the Town wishes to continue the services of Investment Banker to assure future continuity and coordination of the Town's Public Financing.

5.2 Under the terms of this Agreement, Investment Banker may commit considerable time and expense on a fully contingent basis to perform the responsibilities set forth in this Agreement in the preparation of Public Financing and Bonds for public offering. This Agreement is meant, among other things, to provide Investment Banker assurances that said time and expenses may be recovered in the process of successfully underwriting or placing Bonds resulting from the Public Financing process contemplated by this Agreement.

## **6.0 Primary Contact**

6.1 The lead representative of Investment Banker shall be Mark Pressman who will be responsible for all communications and interaction with the Town and others in connection with the development of any Public Financing.

6.2 If Town requests Advisory Services from Investment Banker, separate from this Agreement, the primary representative of Investment Banker responsible for providing Advisory Services to the Town may be someone other than Mark Pressman, as mutually agreed with the Town.

**7.0 Certification – No Conflict**

7.1 Investment Banker certifies that it has no interest, either direct or contingent, in any property or contract arising from or affected by Public Financing with the Town, except as Investment Banker under this Agreement. The Town may enter into a separate agreement with Wulff Hansen to provide Municipal Financial Advisory Services with regard to matters unrelated to Public Financings subject to this Agreement. In no event will Wulff, Hansen provide Municipal Financial Advisory Services in connection with Public Financings subject to this Agreement.

**8.0 Termination of Agreement**

8.1 In the event that, prior to issuance of Bonds pursuant to a Public Financing for which Investment Banker has provided services and/or incurred expenses pursuant to the terms of this Agreement, the Town finds it necessary to discontinue the services of Investment Banker and terminate this Agreement for reasons other than those set forth in paragraph 8.2 below, the Town agrees to compensate Investment Banker for services performed and expenses incurred through the date of said termination at the following rates:

Principals.....	\$350 per hour
Associates.....	\$200 per hour
Support.....	\$75 per hour
Computer Analysis.....	\$300 per hour
Direct Expenses.....	At actual cost

Town recognizes that Investment Banker, by the nature of this Agreement, does not keep detailed records of hours devoted to Town Public Financing, and therefore agrees to accept a good faith estimate of time devoted to the Public Financing on behalf of the Town, should the need arise.

8.2 Notwithstanding the terms of paragraph 8.1, this Agreement may be terminated by the Town for cause based on the following activities of Investment Banker: malfeasance, loss of registration or membership as set forth in the preamble paragraph of this Agreement.

Termination of the Agreement for cause as set forth in this paragraph shall relieve the Town from compensating Investment Banker in accordance with paragraph 8.1 of this Agreement.

8.3 Payment for services and expenses of Investment Banker as set forth in paragraph 8.1, shall be paid within thirty (30) days of submission of an invoice to Town by Investment Banker.

8.4 If Investment Banker and Town are working on particular Public Financings, Town may give written notice of termination with regard to other prospective Town Public Financings to Investment Banker that will terminate this Agreement at the latter of (a) completion of the Public Financings upon which Investment Banker and Town are then working, or (b) thirty (30) days after the notice.

**9.0 Assignment**

9.1 This Agreement may be assigned by Investment Banker to another qualified investment banking firm upon written consent of both the Investment Banker and the Town.

**10.0 Insurance**

10.1. Investment Banker shall obtain and maintain, at Investment Banker’s sole cost and expense, for the term of the Agreement and any extension thereof, a Workers’ Compensation and Employers’ Liability Insurance policy, written in accordance with the laws of the State of California, covering any and all employees of Investment Banker. This policy shall provide for One Hundred Thousand Dollars (\$100,000.00) Employers’ Liability coverage.

**11.0 Authorized Signatures**

11.1 By Resolution of the Town Council, the Town Manager, Finance Director, Town Attorney or designee thereof, is authorized and directed in the name of and on behalf of the Town to execute this Agreement and any updated or modification Addenda as referenced in the preamble to this Agreement. Christopher Charles, President of Wulff, Hansen & Co., or his designee, is authorized to execute on behalf of Wulff, Hansen.

**12.0 Classification of Relationship**

12.1 MSRB Rule G-23, arising from provisions in the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2009, requires that we make clear to you the nature of the relationship we would anticipate having with you regarding a possible transaction. As part of our services, we may provide advice concerning the structure, timing, terms, and other similar matters concerning an issue of municipal securities. However, as an underwriter, placement agent, or in a similar role we will be acting on our own behalf in a commercial, arms’ length transaction and not as a municipal financial advisor or fiduciary to you regardless of whether we have acted or are currently acting as such on a separate transaction.

The primary role of Wulff, Hansen, as an underwriter or placement agent, is to purchase securities, for resale to investors, in an arm’s-length commercial transaction between the Issuer and ourselves, or to place the securities directly with investors. Wulff, Hansen has financial and other interests that differ from those of you, the Issuer. If you would like a municipal advisor that has legal fiduciary duties to you, then you are free to engage a municipal advisor to serve in that capacity.

If you or your colleagues have any questions or concerns about these disclosures, then you should make those questions or concerns known immediately to us. The information we provide to you is not intended to be and should not be construed as “advice” within the meaning of Section 15B of the Securities Exchange Act of 1934 and we encourage you to consult with your own legal, accounting, tax, financial and other advisors, as applicable, to the extent you deem appropriate.

WHEREFORE, the Parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

WULFF, HANSEN & CO.

BY: \_\_\_\_\_  
Christopher Charles, President

TOWN OF FAIRFAX

BY: \_\_\_\_\_  
Town Manager

ATTEST: \_\_\_\_\_  
Town Clerk