

**RESOLUTION NO. 19-18**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING  
THREE AGREEMENTS FOR FINANCING SERVICES RELATED TO  
THE 2019 ENERGY/ SOLAR PROJECT**

**WHEREAS**, the City Council of the City of Firebaugh is considering approval of an 2019 Energy/Solar Project (“Project”); and

**WHEREAS**, the necessary financing for the Project requires legal, underwriting and municipal bond advisor services; and

**WHEREAS**, Kutak Rock has the experience and expertise to provide bond counsel services and offers to enter the Agreement attached as Exhibit 1 to provide said bond counsel services; and

**WHEREAS**, A.M. Peche & Associates LLC, has the experience and expertise to provide municipal bond advisor services and offers to enter the Agreement attached as Exhibit 2 to provide municipal bond advisor services; and

**WHEREAS**, Hilltop Securities has the experience and expertise to provide underwriting services and offers to enter into the Agreement attached as Exhibit 3 to provide bond underwriting services.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Firebaugh as follows:

1. Approve the Agreement attached as Exhibit 1 with Kutak Rock for bond counsel services.
2. Approve the Agreement attached as Exhibit 2 with A.M. Peche & Associates LLC, for municipal bond advisor services.
3. Approve the Agreement attached as Exhibit 3 with Hilltop Securities for underwriting and placement agent services.

The foregoing Resolution was adopted at a regular meeting of the City Council of the City of Firebaugh on the 15<sup>th</sup> day of April, 2019 by the following call vote:

**AYES:** Council Member(s)

**NOES:** Council Member(s)

**ABSENT:** Council Member(s)

**ABSTAIN:** Council Member(s)

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Marcia Sablan, Mayor

\_\_\_\_\_  
Rita Lozano, Deputy City Clerk

# Exhibit 1

## AGREEMENT FOR BOND COUNSEL SERVICES

THIS AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of April, 2019, between the City of Firebaugh, whose address is 1133 "P" Street, Firebaugh, CA 93622 (the "City"), and Kutak Rock LLP ("Kutak") whose address is 5 Park Plaza, Ste. 1500, Irvine, California 92614.

### WITNESSETH:

WHEREAS, the City proposes to finance certain public capital improvements, including certain solar and energy efficient improvements to be located within the City (the "Project"); and

WHEREAS, Kutak is specifically trained and experienced in the conduct of proceedings for accomplishing the financing of the Project through the preparation, sale and delivery of a tax-exempt equipment lease agreement or other obligations for such purposes (the "Obligations"); and

NOW, THEREFORE, in consideration of the covenants and premises herein contained and other good and valuable consideration, the parties hereto agree as follows:

**1. Duties.** Kutak shall provide legal services in connection with the authorization, issuance, sale, execution and delivery of the Obligations (the "Transaction"). Such services shall include, but not be limited to, the following:

a. Conferring and consulting with the City, the officers, administrative staff, financial advisor, underwriter, if any, placement agent, if any, and other representatives of the City in connection with the preparation and formulation of the Transaction.

b. Preparation of the Resolution of Issuance, security documents and all other resolutions, agreements, notices and other documents necessary for the proper conduct and consummation of the Transaction.

c. A review of all financial documents for legal sufficiency.

d. Preparation of an incumbency certificate, an arbitrage certificate, and any and all other closing documents required of the City to accompany delivery of the financing documents.

e. Preparation of documentation and assistance in obtaining credit enhancement and/or a rating on the Obligations if such a rating is sought.

f. Attendance at and supervision of the closing, and issuing the legal opinion of Kutak stating that the interest payments with respect to the Obligations is exempt

from present federal and State income taxes, as the case may be, and approving in all respects the legality of all proceedings for the authorization, issuance, sale and delivery of the Obligations and other agreements relating to the Transaction.

g. Preparation of an official statement and continuing disclosure agreement, if required for the Obligations.

h. Preparation of a transcript of the closing of the Transaction.

i. Conferring and consulting with City officials and agents with regard to any problems which may arise prior to the maturity of the issuance.

j. Providing any other necessary services, including ongoing monitoring of the Transaction after the sale of the Obligations and assistance to the City regarding the Transaction, generally expected of Kutak not listed above.

**2. Compensation.** For provision of the services to be rendered pursuant to this Agreement, the City shall pay Kutak a fee of \$35,000 if the Obligations are issued on a private placement basis and a fee of \$55,000 if the Obligations are issued via public offering. Each fee shall include any out-of-pocket expenses incurred by it in the course of this engagement, such as reproduction and printing costs, word processing time, long distance telephone calls, travel at the request of the City and similar items (excluding any publication costs). Such expenses will not exceed \$3,500. Each fee is payable only upon issuance of the Obligations, and shall be paid from proceeds thereof.

In the event Kutak is requested to perform additional work outside of its normal and customary services as bond counsel, such as litigation, Kutak will be paid additional compensation therefor following the submission of monthly, itemized bills at the hourly rate of the attorney performing such services; provided, however, there shall be no additional compensation due Kutak under the paragraph without the prior approval of the City.

**3. Assignment.** This Agreement may be assigned by the City to any other issuer of the securities as may be necessary to consummate the Transaction, without the consent of but with notice to Kutak.

**4. No Guarantees; Entire Agreement.** Nothing in this Agreement and nothing in our statements to you should be construed as a guarantee or promise about the outcome of the Transaction or any phase thereof. We make no such guarantees or promises. Comments about the course or outcome of the Transaction or any phase thereof which we may make from time to time are expressions of opinion only. The written Agreement constitutes the entire Agreement between the parties hereto with respect to Kutak services and neither party has been induced to make or enter into this Agreement by reason or promise, agreement, representation, statement or warranty other than as herein contained.

**5. Other Representation.** Kutak may, from time to time, have clients with interests which may be potentially adverse to the City. Kutak reserves the right to represent said clients except on matters directly relating to the issuance and sale of the Obligations. We will disclose any such potential conflict to you and will seek a waiver of that conflict. We will of course work with you and our other clients to construct an appropriate ethical wall to protect the confidences of all of our clients and to clearly separate our work in any such case. Although we are not asking for a waiver now since these conflicts may not emerge, we ask that you agree to give good faith consideration to our requests for any such waivers in the future. This will allow us to better serve all of our clients.

**6. Work Product.** Our files developed in the course of work undertaken pursuant to this Agreement are your property. We will release those files to you or to anyone else you designate upon your written request delivered to the attorney in charge of this matter. However, such a request will signify the end of this engagement if it is then still ongoing. You agree that we may, in our sole discretion, copy all or any portion of such files at your expense and retain such copies, and that we may have a reasonable period of time before releasing the documents to you or your designee in order to make the copies. We will from time to time send portions of your files that are not currently needed to an off-site storage facility. The cost of using this facility will be our sole expense. However, we are not the guarantor of the security of any off-site storage facility. Accordingly, you agree that the firm will not be responsible for any damages which may occur as a result of the loss of any of your files which we store at an off-site storage facility. You also agree that we may, after the passage of two years without our having performed any work for you pursuant to this engagement, destroy the files of this engagement without further notice to you unless you have previously provided us with written instructions to forward the files to you or to another person you designate.

**7. Insurance.** We carry professional liability insurance which would cover the services we will be providing under the terms of this Agreement. That insurance is subject to a self-insured retention.

**8. Arbitration.** If an action or proceeding is commenced to enforce this Agreement or any provision hereof, the prevailing party in such an action or proceeding shall be entitled to recover the reasonable amount of his, her or its fees and costs thereof, in addition to compensatory damages. For the purposes of enforcing this Agreement only, and as otherwise required by law, you agree that this Agreement may be disclosed to a court or arbitrator.

**9. Notices.** All notices, demands, requests, consents and approvals given, required or permitted to be given hereunder, shall be contained in writing and shall be deemed sufficiently given if sent by express delivery service or by registered or certified mail, postage prepaid and return receipt requested, addressed to the parties at the addresses set forth above or on any addendum or counterpart to this Agreement, or to such other address as the recipient shall have notified the sender of in writing. You agree to keep us currently informed of any change in your address or telephone numbers so that we may effectively communicate with you. We will also advise you promptly of any change in the firm's business address, electronic mail address, telephone or facsimile numbers.

**10. California Law.** This Agreement is made under and shall be construed in accordance with the substantive laws of the State of California, without reference to choice of law rules.

**11. Counterparts.** This Agreement may be executed in counterparts each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers and representatives thereto duly authorized, all as of the day and year first above written.

**CITY OF FIREBAUGH**

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

**KUTAK ROCK LLP**

By: \_\_\_\_\_  
Albert R. Reyes, a Partner

## Exhibit 2

### CONSULTING SERVICES AGREEMENT

This **CONSULTING SERVICES AGREEMENT** (the "Agreement") is made and entered into as of the 15<sup>th</sup> day of April, 2019, ("Effective Date"), by and between the **City of Firebaugh** (the "City" or "Issuer") and **A. M. Peché & Associates LLC** ("Consultant" or "Peché & Associates LLC") in regards to the financing energy related improvements to City facilities (the "Obligations").

1. **Employment**. The City hereby employs Peché & Associates LLC to perform, upon request of the City, services set forth in the Scope of Services attached hereto.
2. **Representations of Peché & Associates LLC**. Peché & Associates LLC hereby represents the following:
  - A. Peché & Associates LLC has no interest, whether direct, indirect or contingent, in any property or contract arising from or affected by the issuance and sale of the Obligations, except as financial advisor to the Issuer under this Agreement. Peché & Associates LLC will not receive a fee from any source other than the Issuer for services connected with the actual issuance of the Obligations, except as may be disclosed in writing, and has no arrangement with respect thereto with any party other than the Issuer.
  - B. Peché & Associates LLC is an independent private business and is not a department or agency of the federal or California State governments or any other governmental entity. Peché & Associates LLC is not an investment banker, investment advisor, underwriter, remarketing agent, broker or dealer in securities, or legal counsel, and will not function in any of those capacities hereunder.
3. **Agreements of Peché & Associates LLC**. Peché & Associates LLC hereby agrees as follows:
  - A. Peché & Associates LLC will provide, as requested by the Issuer, the services set forth in the Scope of Services attached hereto.
  - B. In providing such services, Peché & Associates LLC will make available the experience of its organization to represent the Issuer effectively.
4. **Obligations Terms**. The Obligations sale shall be subject to rates, terms, conditions and arrangements mutually agreeable to and negotiated between the Issuer and the buyer of the Obligations.
5. **Compensation**. If the Obligations are financed through a Private Placement, the Issuer shall pay to Peché & Associates LLC an amount of \$30,000 upon the closing of the issue. If the Obligations are financed through a Public Sale, the Issuer shall pay to Peché & Associates LLC an amount of \$50,000 upon the closing of the issue. In addition, the Issuer shall reimburse Peché & Associates LLC's actual and reasonable expenses for couriers, mailing, telephone, travel, data and research information, copying, conference call charges, and other out-of-pocket expenses incurred by or for Peché & Associates LLC in performance of its services hereunder in the course of this engagement. Telephone and miscellaneous costs shall be billed at \$75 per month beginning in the first month of the first meeting date during the course of this engagement to and including for the month of the closing of the Obligations. Mileage expenses will be billed at .58 per mile or the current prevailing IRS allowable reimbursement rate. However, no fee shall be payable to Peché & Associates LLC if the request for the sale of the Obligations are not closed successfully; *provided* that, if the sale of the Obligations is

terminated due to an exercise of the Issuer's discretion, based upon a decision to use other funding, Peché & Associates LLC shall be paid all expenses incurred and a fee proportionate to the work performed to the date of that determination.

6. **Assignment.** Peché & Associates LLC may assign this Agreement to a successor firm without the necessity of obtaining the consent of the Issuer. Peché & Associates LLC agrees to give notice of assignment to Issuer and upon receipt of such notice Issuer agrees to make all payments to the assignee designed in the assignment.
7. **Entire Agreement; Amendments.** All discussions, negotiations and prior agreements between the Issuer and Peché & Associates LLC are merged into this Agreement. This Agreement is the entire agreement between the parties respecting the subject matter hereof. This Agreement may be amended only in writing.
8. **Term.** This Agreement shall continue from month to month for the period reasonably necessary for the performance of the sale of the Obligations; *provided*, that either party hereto may terminate this Agreement for cause upon 15 day's written notice to the other party.
9. **Government Code.** Peché & Associates LLC and its representatives are not public officials or participating in governmental decisions, as those terms are used in Section 87100 of the California Government Code. No actions or opinions necessary for the performance of Peché & Associates LLC's duties under this Agreement will cause Peché & Associates LLC to be a "public official" or "participating in a governmental decision," as those terms are used in Section 87100 of the California Government Code.
10. **Information.** The Issuer, its officials and staff, bond/special counsel, fiscal consultant, placement agent or underwriter, and/or others will be providing to Peché & Associates LLC various data, records, studies, computer printouts and other information and representations as to the facts relating to the Issuer and the Obligations. Peché & Associates LLC will be using and relying upon such data, records, studies, computer printouts and other information in the preparation of Peché & Associates LLC's work products. Peché & Associates LLC shall not be obligated to establish or verify the accuracy or completeness of the information furnished to Peché & Associates LLC.
11. **Standards.** Peché & Associates LLC shall perform its services pursuant hereto in accordance with competent professional standards. The liability of Peché & Associates LLC to the Issuer for any breach of those professional standards arising out of or related to this Agreement or the services performed hereunder shall not exceed the fees paid or payable under this Agreement.
12. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.
13. **Independent Contractor.** Peché & Associates LLC's relationship to Issuer is that of an independent contractor.
14. **Notice.** All notices, including notices of address changes, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed to the addresses listed below:
  - (a) **City of Firebaugh:** City Manager, City of Firebaugh, 1133 "P" Street, Firebaugh, CA 93622.
  - (b) **Consultant:** Albert M. Peché, Manager, A. M. Peché & Associates LLC, 1722 Locksley Drive, Lathrop, CA 95330-8432.

15. **Additional Disclosures.** Additional Disclosures required by Municipal Advisors are listed after the Scope of Services at the end of this Agreement and are part of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered for and in the names and on behalf of the Issuer and Peché & Associates LLC as of the date set forth below.

DATED: April 15, 2019

**CITY OF FIREBAUGH**

**A. M. PECHÉ & ASSOCIATES LLC**

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

\_\_\_\_\_  
Albert M. Peché, Manager

Name: **Ben Gallegos** \_\_\_\_\_

Title: **Acting City Manager** \_\_\_\_\_



**City of Firebaugh/A. M. Peché & Associates LLC**

**AGREEMENT FOR SERVICES**

**SCOPE OF SERVICES**

In performing under this Agreement, Peché & Associates LLC shall, as and when requested by City, perform the following services.

When requested, Peché & Associates LLC will provide the following:

1. Assist in the employment of a finance team for the offering and sale of the Obligations, including bond/special counsel, placement agent or underwriter, trustee/paying agent/registrar, verification agent, cash flow consultant, fiscal consultant, bond rating agency(ies), insurance providers, financial printer, and other members of the financing team as required.
2. Develop a transactional budget with the Issuer.
3. If a private placement is used, work with the placement agent in preparing and reviewing a bid solicitation document that can be sent to potential bidders and assist in reviewing bids submitted.
4. If a public sale is used, work with the underwriter to analyze potential credit support for the Obligations, including without limitation, the potential for ratings, bond insurance, letters of credit, or other credit enhancement; assist in rating agency and bond insurance provider presentations and preparation, therefore.
5. Review transactional documentation prepared by bond counsel.
6. Meet with the Issuer's governing body and Issuer committees, officers, professional staff and employees in authorizing and reviewing the structure of the Obligations, to achieve an effective result consistent with the policies, goals and objectives established by the Issuer.
7. Review financial and quantitative analyses prepared by the placement agent or underwriter for the Issuer.
8. Coordinate financial analyses with the underwriter or placement agent (and verification agent if necessary) during the entire financing process.
9. Discuss with the Issuer's officials and staff and the underwriter the maturity and amortization schedules, redemption features, any tender features, covenants, credit enhancement, and timing of the proposed offering and sales of the Obligations to assist in determining desirable results.
10. Advise the Issuer as to market conditions.

## ADDITIONAL DISCLOSURES

### **Fiduciary Duty**

Consultant is registered as a Municipal Advisor with the SEC and Municipal Securities Rulemaking Board ("MSRB"). As such, Consultant has a Fiduciary duty to the Issuer and must provide both a Duty of Care and Loyalty that entail the following:

#### Duty of Care

- a) exercise due care in performing its municipal advisory activities;
- b) possess the degree of knowledge and expertise needed to provide the Issuer with informed advice;
- c) make a reasonable inquiry as to the facts that are relevant to Issuer's determination as to whether to proceed with a course of action or that form the basis for any advice provided to Issuer; and
- d) undertake a reasonable investigation to determine that Consultant is not forming any recommendation on materially inaccurate or incomplete information; Consultant must have a reasonable basis for:
  - i. any advice provided to or on behalf of Issuer;
  - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by Issuer, any other party involved in the municipal securities transaction or municipal financial product, or investors in the Issuer securities; and
  - iii. any information provided to the Issuer or other parties involved in the municipal securities transaction when participating in the preparation of an official statement.

#### Duty of Loyalty

Consultant must deal honestly and with the utmost good faith with Issuer and act in Issuer's best interests without regard to the financial or other interests of Consultant. Consultant will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (as applicable). Consultant will not engage in municipal advisory activities with Issuer as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in Issuer's best interests.

### **Conflicts of Interest and Other Matters Requiring Disclosures:**

- As of the date of the Contract, there are no actual or potential conflicts of interest that Consultant is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If Consultant becomes aware of any potential conflict of interest that arises after this disclosure, Consultant will disclose the detailed information in writing to Issuer in a timely manner.
- The fee paid to Consultant increases the cost of investment to Issuer. The increased cost occurs from compensating Consultant for municipal advisory services provided.

- Consultant does not act as principal in any of the transaction(s) related to this Contract.
- During the term of the municipal advisory relationship, this Contract will be promptly amended or supplemented to reflect any material changes in or additions to the terms or information within this Contract and the revised writing will be promptly delivered to Issuer.
- Consultant does not have any affiliate that provides any advice, service, or product to or on behalf of the client that is directly or indirectly related to the municipal advisory activities to be performed by Consultant;
- Consultant has not made any payments directly or indirectly to obtain or retain Issuer's municipal advisory business;
- Consultant has not received any payments from third parties to enlist Consultant's recommendation to Issuer of its services, any municipal securities transaction or any municipal finance product;
- Consultant has not engaged in any fee-splitting arrangements involving Consultant and any provider of investments or services to Issuer;
- Consultant has a conflict of interest from compensation for municipal advisory activities to be performed, that is contingent on the size or closing of any transactions as to which Consultant is providing advice;
- Consultant does not have any other engagements or relationships that might impair Consultant ability either to render unbiased and competent advice to or on behalf of Issuer or to fulfill its fiduciary duty to Issuer, as applicable; and
- Consultant does not have any legal or disciplinary events that are material to Issuer's evaluation of the municipal advisory or the integrity of its management or advisory personnel.

#### **Legal Events and Disciplinary History**

Consultant does not have any legal events and disciplinary history on their Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. Issuer may electronically access Consultant's most recent Forms MA and each most recent Forms MA-I filed with the Commission at the following website: [www.sec.gov/edgar/searchedgar/companysearch.html](http://www.sec.gov/edgar/searchedgar/companysearch.html).

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

#### **Registration and Customer Complaints**

Pursuant to Municipal Securities Rulemaking Board Rule G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to provide certain written information to their municipal entity and obligated person clients which include the following:

Consultant is currently registered as a Municipal Advisor with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

Within the Municipal Securities Rulemaking Board (“MSRB”) website at [www.msrb.org](http://www.msrb.org), Issuer may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities

### **Recommendations**

If Consultant makes a recommendation of a municipal securities transaction or municipal financial product or if the review of a recommendation of another party is requested in writing by Issuer and is within the scope of the engagement, Consultant will determine, based on the information obtained through reasonable diligence of Consultant whether a municipal securities transaction or municipal financial product is suitable for Issuer. In addition, Consultant will inform Issuer of:

- the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation;
- the basis upon which Consultant reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for Issuer; and
- whether Consultant has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve Issuer’s objectives.

If Issuer elects a course of action that is independent of or contrary to the advice provided by Consultant, Consultant is not required on that basis to disengage from Issuer.

### **Record Retention**

Effective July 1, 2014, pursuant to the Securities and Exchange Commission (SEC) record retention regulations, Consultant are required to maintain in writing, all communication and created documents between Consultant and Issuer for five (5) years.

## Exhibit 3



April 5, 2019

Ben Gallegos  
City Manager  
City of Firebaugh  
1133 P. Street  
Firebaugh, CA 93622

Re: Underwriter / Placement Agent Proposal Letter – City of Firebaugh 2019 Energy  
Projects Lease Purchase

Mr. Gallegos,

On behalf of Hilltop Securities Inc. (“we” or “HilltopSecurities”), we wish to thank you for the opportunity to propose as the underwriter or placement agent for the planned financing (the “Securities”) referenced above. This letter will detail generally the proposed terms of our engagement; however, it is anticipated that this letter will be replaced and superseded by a bond purchase agreement (underwriting) or a placement agent agreement to be entered into by the parties (the “Agreement”) if and when the Securities are priced following the successful completion of the procurement and issuance process.

1. Services to be Provided by HilltopSecurities. The City of Firebaugh (“the Issuer”) is seeking a financial services firm to underwrite publicly offered Securities or to arrange for the placement or direct purchase of the Securities by a qualified purchaser. HilltopSecurities wishes to serve as the sole managing participating underwriter or placement agent of the proposed offering and issuance of the Securities, and in such capacity HilltopSecurities agrees to provide customary services, including but not limited to:

- a. Review and evaluate of the proposed terms of the offering of the Securities
- b. Coordinate with the issuer and obligated parties (if applicable) for the offering of the Securities
- c. Assist in the preparation of offering documents or bank RFP documents and credit materials
- d. Consult with Bond Counsel and other service providers about the bonds and the terms of the Securities
- e. Relay information regarding the offering process to the Issuer and Borrower

- f. Negotiate the pricing, including the interest rate, and other salient terms of the Securities
- g. Obtain CUSIP number(s) for the Securities and arrange for their DTC book-entry eligibility (if needed)
- h. Plan and arrange for the closing and settlement of the issuance and the delivery of securities
- i. Such other usual and customary underwriting services as may be requested

As an underwriter, HilltopSecurities will not be required to purchase the Securities except pursuant to the terms of the Purchase Agreement, which will not be signed until successful completion of the underwriting period. This letter does not obligate HilltopSecurities to purchase any of the Securities. Any commitment to purchase Securities is subject to future credit, legal and business approvals by HilltopSecurities.

2. No Advisory or Fiduciary Role. Issuer acknowledges and agrees that: (i) the primary role of HilltopSecurities, as an underwriter, is to purchase Securities for resale to investors in an arm's length commercial transaction between Borrower, the Issuer, and HilltopSecurities. As a placement agent HilltopSecurities is negotiating for the purchase of the Securities by a third party purchaser in an arm's length commercial transaction. HilltopSecurities has financial and other interests that may differ from those of the Issuer; (ii) HilltopSecurities is not acting as a municipal advisor, financial advisor, or fiduciary to Borrower or the Issuer and has not assumed any advisory or fiduciary responsibility to Borrower or the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether HilltopSecurities has provided other services or is currently providing other services to the Issuer on other matters); (iii) the only obligation HilltopSecurities has to Borrower or the Issuer with respect to the transaction contemplated hereby expressly are set forth in this agreement; and (iv) Borrower and the Issuer has consulted or will consult its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate.

Issuer further acknowledges it is aware of the "Municipal Advisor Rule" of the Securities and Exchange Commission (effective July 1, 2014) and the underwriter exclusion from the definition of "municipal advisor" for a firm serving as an underwriter for a particular issuance of municipal securities. The Issuer expects that HilltopSecurities will provide advice on the structure, timing, terms, and other matters concerning the Securities.

3. Fees and Expenses.

**Underwriting**

HilltopSecurities' underwriting discount will not exceed \$10.00/\$1,000 or 1.00% of the par amount of the issue (\$4,675,000 estimated par).

<b>Underwriter's Discount</b>	<b>\$ / \$1,000</b>	<b>\$ Dollars</b>
Takedown	\$5.00	\$23,375.00
Management Fee	2.00	9,375.00
UW Expenses	.85	4,000.00
UW Counsel	2.15	10,000.00
<b>Total UWD</b>	<b>\$10.00</b>	<b>\$46,750.00</b>

The underwriting discount will be paid out of the bond issuance. The Issuer and/or Borrower will be responsible for paying all other costs of issuance, including without limitation, bond counsel and all other expenses incident to the performance of the Issuer's obligations under the proposed offering

**Placement Agent**

HilltopSecurities' placement agent fee will not exceed \$30,000.00 as a flat fee. The Placement agent fee will be paid out of the costs of issuance. The Issuer and/or Borrower will be responsible for paying all other costs of issuance, including without limitation, bond counsel and all other expenses incident to the performance of the Issuer's obligations under the proposed offering.

4. Term and Termination. If the Issuer engages HilltopSecurities the terms shall extend from the date of this letter to the closing of the offering of the Securities. Notwithstanding the foregoing, either party may terminate HilltopSecurities' engagement at any time upon at least 10 days' prior written notice to the other party.

If there is any aspect of this proposal letter that you believe requires further clarification, please do not hesitate to contact us.



Again, we thank you for the opportunity to assist you with your proposed financing and the confidence you have placed in us.

Very truly yours,  
Hilltop Securities Inc.

By: \_\_\_\_\_  
Todd Smith

Title: Managing Director, Public Finance



## **PLACEMENT AGENT AGREEMENT**

This Placement Agent Agreement (“Agreement”) is made and entered into by and between the City of Firebaugh, California (the “Issuer”) and Hilltop Securities Inc. (“HilltopSecurities”).

### **WITNESSETH:**

WHEREAS, the Issuer presently intends to issue indebtedness in the amount of \$4,500,000 for its 2019 Energy Project Lease Purchase Financing (the “Financing”) and, in connection with the authorization, sale, issuance and delivery of such indebtedness, the Issuer desires to obtain the professional services of HilltopSecurities to serve as the placement agent for the Financing; and

WHEREAS, HilltopSecurities is willing to provide its professional services and its facilities as placement agent, acting not as a fiduciary, in connection with the issuance of the Financing.

NOW, THEREFORE, the Issuer and HilltopSecurities, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, do hereby agree as follows:

### **SECTION I DESCRIPTION OF SERVICES**

Upon the request of an authorized representative of the Issuer, HilltopSecurities agrees to provide its professional services and its facilities as placement agent in connection with the issuance of the Financing and the provision of a Certificate of Placement Agent for the issue; and for having rendered such services, the Issuer agrees to pay to HilltopSecurities the compensation as provided in Section III hereof.

### **SECTION II TERM OF AGREEMENT**

This Agreement shall become effective as of the date executed by the Issuer as set forth on the signature page hereof and, shall remain in effect thereafter until the Issuer has paid HilltopSecurities in full the placement agent fee and all reimbursable expenses.

### **SECTION III COMPENSATION AND EXPENSE REIMBURSEMENT**

The fees due to HilltopSecurities for the services set forth and described in Section I of this Agreement with respect to the issuance of the Financing during the term of this Agreement shall be calculated in accordance with the schedule set forth on Appendix A attached hereto. Unless specifically provided otherwise on Appendix A or in a separate written agreement between Issuer and HilltopSecurities, such fees, together with any other fees as may have been mutually agreed upon and all expenses for which HilltopSecurities is entitled to reimbursement, shall become due and payable concurrently with the delivery of the proceeds of the Financing to the Issuer. HilltopSecurities has not received nor will it collect any compensation or other consideration from the buyer(s).

**SECTION IV  
MISCELLANEOUS**

1. Choice of Law. This Agreement shall be construed and given effect in accordance with the laws of the State of California.
2. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Issuer and HilltopSecurities, their respective successors and assigns; provided however, neither party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.
3. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this Agreement shall be of no force or effect except for a subsequent modification in writing signed by the parties hereto.
4. No Fiduciary Duty. The Issuer acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm's length, commercial transaction between the Issuer and HilltopSecurities in which HilltopSecurities is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer; (ii) HilltopSecurities has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto irrespective of whether HilltopSecurities or any of its affiliates has provided other services or is providing other services to the Issuer on other matters; (iii) the only obligations HilltopSecurities has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Agreement; and (iv) the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

**HILLTOP SECURITIES INC.**

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

Todd Smith  
Managing Director

**CITY OF FIREBAUGH, CALIFORNIA**

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

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

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

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

\$4,500,000  
City of Firebaugh  
(2019 Energy Project Lease Purchase Financing Placement Agent Signature Page)

**APPENDIX A**

The fees due HilltopSecurities for the Financing will not exceed that listed below:

**\$30,000 USD**

The Issuer shall be responsible for the following expenses, if any:

Bond Counsel fee and charges  
Bank Counsel fee and charges  
Trustee or Escrow Bank  
Municipal Advisor  
Printing and distribution costs of documents  
Cost of any required notices  
CDIAC fees  
MSRB fees  
Third party reports, providers, or consultants

***HilltopSecurities will be responsible for its own travel expenses and its own legal fees. Our fee is entirely contingent on the successful completion of the Financing.  
If the Financing fails to close, we will not be reimbursed for any expenses.***