



ERIE COUNTY WATER AUTHORITY INTEROFFICE MEMORANDUM

February 11, 2019

To: Finance Committee: Commissioners Schad, Carney and Jones

From: Robert J. Lichtenthal, Jr., Deputy Director *RJL*

Subject: Financial Advisory Services

At the Board Meeting of March 24, 2016 the Board authorized the issuance of an RFP for Financial Advisory Services. RFP packages were sent to five (5) firms. The Authority received three (3) responses. The respondents were Capital Markets Advisors, LLC, Fiscal Advisors & Marketing, Inc. and Public Financial Management, Inc. A committee consisting of myself, Karen A. Prendergast, Comptroller, Susan L. Rinaldo, Cash Manager and Joyce A. Tomaka, Asst. Manager of Accounting Services (now Manager of Accounting Services) reviewed the proposals. Capital Markets Advisors, LLC was recommended by the staff committee.

The Erie County Water Authority entered into a professional services agreement on May 26, 2016 (effective June 1, 2016) with Capital Markets Advisors, LLC ("CMA") to act as a financial advisor to the Authority. The initial contract term was for three years. The contract also includes provision for three (3) additional one-year extensions by mutual agreement of the Authority and CMA. The original contract is set to expire on May 31, 2019.

I have received a letter from Mr. Rick Ganci, Executive Vice President and Principal of the firm expressing his firm's offer to extend the contract for an additional year under the same terms and conditions as currently agreed to (letter attached). A summary of those terms is an attachment to the letter.

In 2016 a number of factors were identified which made CMA the best choice:

- 1.) They have a local office. The proximity factor may become beneficial as the Authority completes the current phase of capital planning with the expectation of taking on a significant distribution system upgrade and regularly issuing debt to fund this long term initiative. Authority staff will be able to meet regularly on a face-to-face basis with Capital Markets Advisors staff on all phases of an issuance without incurring the travel costs associated with the other firms.

They will also be available to meet with the Finance Committee and Bond Counsel as needed without the planning travel and logistical issues associated with an out of town firm.

- 2.) Capital Markets Advisors was the first firm to proactively recommend to the Authority the potential benefits of an advance refunding of the Authority's 2007 bonds. The firm took the initiative to reach out to the Authority on this matter.

I would recommend that the Finance Committee and the Board of Commissioners take advantage of this offer. The firm has provided excellent advice and service to the Authority over the term of the contract, assisting the Authority with two extremely competitive and successful bond offerings, the 2016 refunding issue and the 2018 new money issue.

Therefore, I am asking for the Committee to recommend to the Board the extension for one (1) year of the contract with Capital Markets Advisors, LLC as the Authority's Financial Advisor.



4211 North Buffalo Rd. / Suite 19
Orchard Park, New York 14127
Phone 716-662-3910 / Fax 716-662-6684

February 6, 2019

Robert J. Lichtenthal, Jr.
Deputy Director/CFO
Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

Re: Financial Advisory Services – Contract Renewal

Dear Bob:

On behalf of Capital Markets Advisors, LLC, ("CMA"), we would be delighted to continue to provide financial advisory services to the Erie County Water Authority pursuant to terms of the existing contract which allows for three (3) additional one year extensions beginning June 1, 2019. CMA has served as the Financial Advisor to the Authority since May 2016, and during that time we have become very familiar with the credit profile, debt issuance practices, and personnel. We hope that the Authority will agree that CMA has brought added value to the Authority while delivering services in an extremely attentive and professional manner.

CMA is an independent municipal advisory firm, registered by the Securities and Exchange Commission ("SEC") and Municipal Securities Rulemaking Board ("MSRB"), serving the needs of local governments, school districts and public authorities throughout New York State (the "State") from our offices in Orchard Park, on Long Island, in the Hudson Valley and New York's Southern Tier. The CMA team is routinely ranked among the most active financial advisors in the State and the nation. Through 2018, CMA was ranked by Thompson Reuters among the 10th most active financial advisors in the country and the most active advisor in the State. Having served a client base of over 180 school districts and 250 municipalities and public authorities including the big four cities of Buffalo, Rochester Syracuse and Yonkers, CMA personnel are particularly well suited to deliver all of the financial advisory services required by the Authority.

During the past three years the Authority has been, and continues to be one of our most important clients. We wish to continue this relationship over the next several years by providing you and your team with sound financial advice as it relates to strategic financial planning and debt management. Please find attached herein our fee schedule which is the same as our original contract from May 2016.

Sincerely,
Capital Markets Advisors, LLC

A handwritten signature in black ink, appearing to read "Rick Ganci", written in a cursive style.

Rick Ganci
Executive Vice President and Principal
rganci@capmark.org

For the period June 1, 2019 to June 1, 2020

Cost Proposal

- A. For Bond and Revenue Anticipation Note Issues: a base fee of \$4,500 plus \$0.20 per each \$1,000 of par amount of notes issued.
- B. For Bond Issues: a base fee of \$5,000 plus \$0.70 per each \$1,000 of par amount of notes issued with a minimum fee of \$24,500 and a maximum fee of \$74,500.
- C. Continuing Secondary Market Disclosure, including all Material Event Notices, if requested: \$2,000.
- D. For additional services not related to note and bond issues, for example arbitrage rebate analysis and bidding of open market securities, \$195/hour.
- E. Authority will pay normal issuance costs such as the printing of preliminary and final official statements, notices of sale, postage, photocopying, overnight delivery charges, bond counsel, general counsel, rating agency, legal advertising and other associated issuance expenses.

Required Regulatory Disclosure

Municipal Securities Rulemaking Board ("MSRB") Rule G-10 requires that municipal advisors, including CMA, provide to their clients the following information once each calendar year:

(i) CMA is registered as an independent municipal advisor with the MSRB and the US Securities and Exchange Commission ("SEC"); (ii) CMA is subject to the regulations and rules on municipal advisory activities established by the SEC and MSRB; (iii) the website for the MSRB is www.msrb.org and the website for the SEC is www.sec.gov and (iv) in addition to having educational materials about the municipal securities market, the MSRB website has a municipal advisory client brochure that describes the protections that may be provided by the MSRB rules and how to file a complaint with the appropriate regulatory Authority.

MSRB Rule G-42 requires that municipal advisors, including CMA, inform their clients as to any conflicts of interest that may exist that could impact the client. To the best of our knowledge and belief, neither CMA nor any registered associated person has any material undisclosed conflict of interest that would impact CMA's ability to service the Authority.

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this 24th day of May, 2016, by and between:

ERIE COUNTY WATER AUTHORITY

295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the "Authority", and

CAPITAL MARKETS ADVISORS, LLC

One Great Neck Road
Great Neck, New York 11021

hereinafter referred to as "Consultant".

WHEREAS, the Authority issued a Request For Proposals for Financial Advisory Services, Project No: 201600069 on March 24, 2016 (hereinafter referred to as the "RFP"); and

WHEREAS, the Consultant submitted a Proposal to Provide Financial Advisory Services For Project No.: 201600069 on April 11, 2016, in response to the Authority's RFP (hereinafter referred to as the "Proposal"); and

WHEREAS, the Authority desires to contract with the Consultant to render professional services upon the terms and for the consideration hereinafter stated; and

WHEREAS, the Consultant represents that it is properly qualified to render such services; and

WHEREAS, the parties desire to set forth herein the terms and conditions under which the said professional services will be furnished;

NOW, THEREFORE, in consideration of mutual promises herein set forth, the parties agree as follows:

1. QUALIFICATION OF CONSULTANT:

The Consultant shall perform its services under this agreement in a skillful and competent manner in accordance with the highest standards of the consulting profession. The Consultant will be responsible to the Authority for errors or omissions in the performance of its services and failure to perform thereof. Additionally, the Consultant shall abide by the most current version of the Authority's Investment Guidelines, which shall be amended from time to time, and is available on the Authority's website.

2. SCOPE OF SERVICES:

The Consultant, as outlined in the RFP and in the Proposal, both of which are hereby incorporated by reference, will provide the following professional financial advisory services to the Authority as it relates to the planning, structural analysis and issuance of debt obligations:

Debt Management Services:

1. Participate in the planning, development and execution of long term financial strategies. In addition the Consultant will assist the Authority in maintaining a financial plan to meet future goals.
2. Assist the Authority in the planning and development of capital budgets.
3. Advise on matters regarding the development and implementation of certain fiscal policies.
4. Review legal, financial, economic and other information necessary for the Consultant to advise in planning, structuring and otherwise completing each debt issue to be undertaken by the Authority.
5. Prepare a plan of financing which will include the Consultant's analysis and recommendations to the Authority regarding funding requirements and alternatives, marketing, method of sale (competitive or negotiated; EFC or stand-alone), call provisions, credit ratings, credit enhancement, term, federal tax implications and such other matters which the Authority and the Consultant agree should be included in the plan of financing.
6. As directed, the Consultant will prepare, disseminate and evaluate in the selection of other service providers necessary to conduct each issue including, but not limited to, bond insurance, bond counsel, underwriter, escrow agent, and verification agent.
7. Provide market updates as related to the Authority's debt.
8. Prepare amortization schedules and alternative financing scenarios.

9. Monitor the existing debt of the Authority to identify refunding opportunities.
10. Prepare final debt service schedules including fund and projects schedules as necessary.
11. Assist the Authority with the development of new or improvement of existing financial policies and procedures.

Bond Sale Services:

1. Advise on and coordinate the credit rating process. This includes submitting required documents to all three credit agencies and addressing any questions that the assigned analyst may have. If appropriate, we will schedule and attend a meeting or site visits with agency officials and assist in the preparation of the presentation book. In addition, we will advise the Authority on the criteria applied by the major municipal securities rating agencies.
2. Prepare a plan of financing which will include the Consultant's analysis and recommendations to the Authority.
3. Provide current and historic market updates to determine best time to price/sell securities and for utilization in evaluating pricing of a transaction.
4. Assist the Authority in disseminating information to the public. As needed, assist in preparation of informational brochures; attend meetings with Authority staff and the legislature, and public information meetings to discuss financing strategies with an emphasis on funding and the capital markets.
5. Prepare or assist in the preparation of financing documents, as required, including but not limited to: Official Statement, Notice of Sale and Bid Sheet, debt statement and pre-sale or post-sale analysis, when appropriate.
6. Participate in all working group meetings and conference calls (particularly with Bond Counsel) to help ensure compliance with the legal requirements of a bond or note issuance.
7. Assist in the evaluation of bond proposals and prepare post sale bond summaries for the Authority's records.
8. Prepare and maintain a financing schedule, cost of issuance budget, list of participants, and take such other actions requested by the Authority to efficiently manage each issue in order to meet the Authority's objectives.
9. Prepare and coordinate the printing and distribution of the Notice of Sale, Bid Sheet and Official Statement. Distribution includes posting of documents on the Consultant's

website at **www.capmark.org** and Parity's electronic bidding service, sending documents electronically and via regular mail and publishing the Notice of Sale, when required.

10. Act as a liaison between the Authority and municipal underwriters.
11. Participate in the sale of the debt, advise on the acceptance of a note or bond bid, confirm interest cost calculation, and verify underwriter's compensation.
12. Prepare and disseminate to all interested parties, a closing letter to assist with the delivery of proceeds.
13. Coordinate closing of the issue; verify receipt of proceeds and assist with payment of issuance costs.
14. Prepare a post-sale analysis and final pricing report which will include sale related items and final debt service schedules.
15. Competitively bid out the investment of proceeds, if requested.

Other Services:

1. Complete Continuing Disclosure filing and material event notices with Municipal Securities Rulemaking Board ("MSRB") at the Authority's request.
2. Provide technical advice, as requested by the Authority, concerning miscellaneous issues and questions relative to debt obligations.

3. PAYMENT FOR SERVICES:

The Consultant shall be paid in accordance with the following:

- 3.01 For Consultant's performance of services on behalf of The Authority as described in Section 2, Scope of Services, the Consultant's fees associated with each issuance or service will be as follows:

- A. New Money Bond Issues Sold via Negotiated or Competitive Sale; Refunding Bond Issues

Base Fee of \$5,000 plus \$0.70 per each \$1,000 of par amount of each series of bonds issued with a minimum fee of \$24,500 and maximum fee of \$74,500

B. Bond and Revenue Anticipation Notes

Base Fee of \$4,500 plus \$0.20 per each \$1,000 of par amount of notes issued

C. Other Services Unrelated to Specific Debt Issuances

\$195 per hour for other services rendered to the Authority at the Authority's request but unrelated to a specific note or bond issue, for example arbitrage rebate analysis and bidding of open market securities.

D. Continuing Disclosure

Additionally, pursuant to Internal Revenue Code Section 15c2-12, issuers of municipal securities are required to file annually with the MSRB annual updates to financial and operating data and audited financial statements. For such filing service the Consultant will charge a flat fee of \$2,000 annually for Continuing Disclosure inclusive of all required Material Event Notice filings, if such service is requested by the Authority.

E. Out-of-Pocket Expenses

Billed to Authority at cost (including the cost of reproducing audits, budgets, Official Statements, and other documents, and overnight delivery charges).

3.02 The Authority will pay normal issuance costs such as the printing of preliminary and final official statements, notices of sale, postage, photocopying, overnight delivery charges, bond counsel, rating agency, legal advertising and other associated issuance expenses.

3.03 Payment of Consultant's compensation is due within 45 days of receipt of Consultant's invoice following the closing of the financing.

4. **TERM:** The services described herein shall commence on the first day of June, 2016, and be for a term of three (3) years from that date, with an option to extend the Agreement for three additional one year periods, on 30 days written notice to the Consultant prior to the expiration of the Agreement. Such extensions shall be in writing and authorized by a resolution of the Board of Commissioners of the Authority, and signed by all parties.

5. **SUBCONTRACT AND ASSIGNMENT:** The Consultant may not subcontract or delegate any of the work, services, and/or other obligations of the Consultant without the express written consent of the Authority. The Authority and the Consultant bind themselves and their successors, administrators and assigns to the terms of this

Agreement. The Consultant shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.

6. **AMENDMENTS:** No modification or variation from the terms of this Agreement shall be effective unless it is in writing and authorized by a resolution of the Board of Commissioners of the Authority and signed by all parties.
7. **RIGHT TO TERMINATE:** The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on fourteen (14) days written notice. Consultant shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.
8. **INDEMNIFICATION:** The Consultant shall indemnify the Authority against any and all claims arising from the services performed by the Consultant herein and shall defend and hold harmless the Authority from and against all claims, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees based upon or arising out of damage to property or injury to persons or other tortuous' conduct caused or contributed to it by the Consultant or anyone under its direction or control or on its behalf in the course of its performance under this Agreement. The Consultant further agrees to indemnify, defend and hold harmless the Authority from any and all claims in reference to the services performed by the Consultant hereunder which may infringe on a patent, copyright, trade secret or other proprietary right of any third party.
9. **CONFIDENTIAL INFORMATION:** In order to assist the Consultant in the performance of this Agreement, the Authority may provide the Consultant with confidential information including, but not limited to information relative to the services to be performed. All information received by the Consultant in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, is considered confidential. The Consultant shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performing of services including but not limited to information relative to the services to be performed.

The Consultant shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Consultant shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the consultant's benefit or for the benefit of others shall be permitted.

In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. The terms of this paragraph shall be binding during and subsequent to the termination of this agreement.

10. **INSURANCE:** The Consultant shall secure and maintain such insurance as will protect itself from claims under the Workers Compensation Act; claims for damages because of

bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting there from in the amounts indicated on Exhibit A. The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.

11. **COPYRIGHTS, TRADEMARKS, AND LICENSING:** All materials produced under this Agreement, whether produced by the Consultant alone or with others, and whether or not produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Consultant shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether or not registered.
12. **NEW YORK LAW AND JURISDICTION:** Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Consultant and the Authority shall be governed, interpreted and decided by a Court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.
13. **CONFLICTS OF INTEREST:** The Consultant represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Consultant from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Consultant will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without further liability of the Consultant, except to pay for services actually rendered.

The Consultant shall notify the Authority of any inquiries, requests background information, etc., requested by a third party relative the Authority as soon as the request is received by the Consultant.
14. **ADDITIONAL CONDITIONS:** The Consultant and the Authority acknowledge that there may be additional conditions, terms and provisions which shall apply specifically to the services to be performed. The parties agree to negotiate in good faith to agree upon such additional terms.
15. **ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or

written with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound thereby.

16. **INDEPENDENT STATUS:** Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant a partner, employee or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.

The Consultant is free to choose the aggregate number of hours worked and substantially all of the scheduling of such hours as it shall see fit at its discretion within the limitations set forth hereinbefore in Paragraph 2.

Neither the Consultant nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.

In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

17. **COMPLIANCE:** The Consultant agrees that the Agreement herein shall be in compliance with and governed by the provisions of Section 2875, 2876 and 2878 of the Public Authorities Law of the State of New York. The Consultant further affirms under the penalties of perjury that there was no collusion in the proposal submitted herein to ECWA which forms the basis of the within Agreement.
18. **GRATUITIES:** The Consultant prohibits its employees from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Consultant or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.
19. **NOTICE:** Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses hereinbefore stated.

Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

20. **SEVERABILITY:** If any provision of this agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and enforceability of all other provisions of this agreement shall not be affected thereafter.
21. **TERMINATION:** The Authority reserves the right to terminate this contract in the event it is found that the Certification filed by the Consultant in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Consultant in accordance with the written notification terms of this contract.

ERIE COUNTY WATER AUTHORITY

By Earl Jann
Earl L. Jann, Chairman

Date: 5/26/16

CAPITAL MARKETS ADVISORS, LLC

By Rick Ganci
Rick Ganci, Senior Vice President and Principal

Date: 5-17-16

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 20th day of May, in the year 2016, before me personally came Earl J. Jann, to me known, who, being by me duly sworn, did depose and say that he resides in Aurora, New York, that he is the Chairman of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

Patricia Fabozzi
Notary Public

PATRICIA FABOZZI #4957586
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 2017

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 17th day of May, in the year 2016, before me personally came Rick Ganci, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself depose and say that he is a member of the firm of Capital Markets Advisors, LLC, a Limited Liability Company, and that he executed the foregoing instrument in the firm name of Capital Markets Advisors, LLC, and that he had authority to sign same, and he did acknowledge to me that he executed the same as the act and deed of said firm of Capital Markets Advisors, LLC, for the uses and purposes mentioned herein.

Linda Lorentz
Notary Public

LINDA LORENTZ
Notary Public - State of New York
NO. 01106134119
Qualified in Erie County
My Commission Expires 9/26/17