



TOWN OF WEST SENECA

TOWN SUPERVISOR
GARY A. DICKSON
TOWN COUNCIL
WILLIAM BAUER
JEFF PIEKAREC
JOSEPH J. CANTAFIO
WILLIAM P. HANLEY

MEGAN K. WNEK, CPA
DIRECTOR OF FINANCE

TO: Honorable Town Board / Town of West Seneca

FROM: Megan K. Wnek, CPA
Director of Finance

DATE: August 31, 2020

RE: Professional Services Financial Advisory Services

Proposals to provide Financial Advisory Services in connection with bond and note financings were received from two companies for consideration by the Town Board. I have attached the two proposals and a resolution to be adopted in favor of the Board's decision.

RESOLUTION FOR PROFESSIONAL SERVICES FINANCIAL ADVISORY SERVICES

WHEREAS, the Town of West Seneca (the "Town") recognizes that it requires professional services for financial advisement in connection with bond and note financings; and

WHEREAS, the Town secured proposes for financial advisory services from two companies (Capital Markets Advisors, LLC and Municipal Solutions, Inc); and

WHEREAS, THE Town has carefully weighed the proposals, including the services proposed and the cost for said services, and the Town desires to secure cost-effective professional financial advisory services that best suit the needs of the Town for the benefit of the taxpayers; and

NOW THEREFORE, be it resolved that the Town Board of the Town of West Seneca authorizes the Supervisor to execute the Professional Services Agreement with _____ for financial advisory services as more fully described in the attached proposal at the rates contained therein.

Capital Markets Advisors, LLC

Independent Financial Advisors

FINANCIAL ADVISORY SERVICES AGREEMENT

This Agreement has been entered into this 1st day of July, 2020 by and between the **Town of West Seneca**, New York (the "Client") and **Capital Markets Advisors, LLC** ("CMA"), a limited liability company created under the laws of the State of New York and having its principal place of business at 11 Grace Avenue, Suite 308, Great Neck, New York 11021 with additional offices in Hopewell Junction, Elmira and 4211 North Buffalo Road, Suite 19, Orchard Park, NY 14127.

Section 1 Financial Advisory Services

CMA will provide the following services in connection with bond and note financings (the "Issue"), undertaken by Client during the term of this Agreement.

- 1.01 Review legal, financial, economic and other information necessary for CMA to advise the Client in planning, structuring and otherwise completing each Issue to be undertaken by the Client.
- 1.02 Prepare a plan of financing which will include CMA's analysis and recommendations to the Client regarding funding requirements, structuring alternatives, marketing, method of sale, security features, call provisions, credit ratings, credit enhancement, term, federal tax implications and such other matters which the Client and CMA agree should be included in the plan of financing.
- 1.03 Prepare or assist in the preparation of financing documents, as required by the Client, including but not limited to: term sheet, Official Statement, Notice of Sale and bid sheet, request for a credit rating, request for bond insurance, DTC Letter of Representations, and post-sale analysis.
- 1.04 Upon the request of the Client, CMA will assist the Client in the selection of other service providers necessary to conduct each Issue including but not limited to Bond Counsel, rating agencies, bond insurer, underwriters, trustee and financial printer, if appropriate.
- 1.05 Prepare and maintain a financing schedule, costs of issue, list of participants, and take such other actions requested by the Client to efficiently manage each Issue to meet Client's objectives.
- 1.06 Participate in the sale of the debt, confirm net interest cost calculation, verify underwriter's compensation and make a recommendation as to award.
- 1.07 Assist the Client with the delivery of proceeds of each Issue, payment of issuance costs and other matters related to closing each Issue.
- 1.08 Prepare final debt service schedules.
- 1.09 Assist with the closing of the Issue and verify receipt of Issue proceeds.

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Section 2 Compensation

2.01 For CMA's performance of services on behalf of the Client as described in sections 1.01 through 1.09 hereof, CMA's compensation will be as follows:

For General Obligation Serial Bond issues with an Official Statement: a base fee of \$7,500 plus \$0.50 per each \$1,000 of the par amount of bonds issued.

For Refunding Serial Bond issues sold via Negotiated or Competitive Sale with an Official Statement: fee is subject to negotiation between the Town and CMA based upon par amount and complexity of the transaction.

For Serial or Statutory Installment Bonds less than \$1,000,000 using a Term Sheet (no Official Statement): \$2,000.

For Bond, Tax and Revenue Anticipation Note issues with an Official Statement: a base fee of \$4,500 plus \$0.45 per each \$1,000 of the par amount of notes issued.

For Tax and Revenue Anticipation Note issues less than \$1,000,000 using a Term Sheet (no Official Statement): \$2,000.

For Bond Anticipation Note issues less than \$1,000,000 using a Term Sheet (no Official Statement): \$2,000.

Continuing Secondary Market Disclosure: CMA will charge a flat fee of \$2,250 for Continuing Disclosure inclusive of all required Material Event Notice filings.

All other work for services rendered to the Client at the Client's request but unrelated to a specific bond or note issue, at the blended hourly rate of \$150.

Out of Pocket Expenses: Out-of-pocket expenses billed to the Client at our direct cost might include photocopying, printing of presentation materials, overnight delivery charges, an internet distribution fee, and mileage reimbursable at current IRS rates.

Section 3 Term of Agreement

The term of this Agreement shall be for three (3) years from the date hereof.

Section 4 Disclosure

CMA does not assume the responsibilities of the Client, nor the responsibilities of the other professionals and vendors representing the Client, in the provision of services and the preparation of financing documents for financings under this agreement. CMA accepts the relationship of trust and confidence established between it and the Client. CMA agrees to furnish its best skill and judgment in the performance of its services in the most expeditious and economical manner consistent with the interests of the Client. Information obtained by the CMA, either through its own efforts or provided by the Client, included in the financing documents, or otherwise provided to the Client, is by reason of experience and professional judgment, believed to be accurate; however, such information is not guaranteed by the CMA. However, nothing in this paragraph shall relieve CMA from liability due to negligence or want of due diligence in the performance of its services.

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Section 5 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 Disclosure Duties of Non-Solicitor Municipal Advisors

Capital Markets Advisors, LLC (“CMA”) is an MSRB Registered Municipal Advisor that conducts all municipal advisory activities subject to the fiduciary standards of conduct. MSRB Rule G-42 requires that municipal advisors disclose to their clients any actual or potential material conflict of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. If no such material conflicts of interest are known to exist, municipal advisors are required to provide a written statement to that effect.

To the best of CMA’s knowledge and belief, neither CMA nor any associated person has any material undisclosed conflict of interest.

- CMA has no financial interest in, nor does CMA receive any undisclosed compensation from, any firm or person that CMA may use in providing any advice, service, or product to or on behalf of any CMA client.
- CMA does not pay contracted MSRB registered solicitors or other MSRB registered municipal advisors directly or indirectly in order to obtain or retain an engagement to perform municipal advisory services for any municipal entity.
- CMA does not receive any payments from a third party to enlist CMA’s recommendation of services, municipal securities transactions, or any municipal financial product or service.
- CMA does not have any fee-splitting arrangements with any provider of investments or services to any municipal entity.
- CMA may have conflicts of interest arising from compensation for municipal activities to be performed that are contingent on the size or closing of such transaction for which CMA is providing advice. This potential conflict of interest exists if CMA should fail to get paid for its work on a transaction in the event that transaction does not close.
- CMA services a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of other municipal clients. These other clients may, from time to time and depending on specific circumstances, have competing interests, such as accessing the market with the most advantageous timing. In acting in the interests of its various clients, CMA could potentially face a conflict of interest arising from these competing client interests. However, none of these other engagements or relationships would impair CMA’s ability to fulfill its regulatory duties to its municipal clients.
- There are no other actual conflicts of interest that could reasonably be anticipated to impair CMA’s ability to provide advice to any municipal entity in accordance with the standard of fiduciary conduct.

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Information Regarding Legal Events and Disciplinary History Disclosure:

MSRB Rule G-42 requires that municipal advisors provide to their client's certain disclosures of legal or disciplinary events material to the client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

- Neither CMA nor any of its Associated Persons are currently subject to or have been subject to any legal or disciplinary event that could be material to a client's evaluation of the Firm or the integrity of its management or Associated Persons.
- CMA's Form MA and Form MA-Is for each of the Firm's Associated Persons are posted in the Edgar Database located on the U.S. Securities and Exchange Commission's website (www.sec.gov).
- CMA has not made any material legal or disciplinary event disclosures on Form MA or any Form MA-I filed with the U.S. Securities and Exchange Commission.

Future Supplemental Disclosures:

As required by MSRB Rule G-42, these disclosures may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described, or to provide information with regard to any legal or disciplinary events. CMA will provide its municipal clients with any supplement or amendment as it becomes available throughout the terms of each agreement or contract.

Section 6 Binding Effect

All agreements and covenants contained herein are severable and in the event any of them shall be held to be invalid by any competent court, this agreement shall be interpreted as if such invalid agreements or covenants were not contained herein, and the remaining provisions of this agreement shall remain in full force and effect. Each party hereto represents and warrants that this agreement has been duly authorized and executed by it and constitutes its valid and binding agreement and any governmental approvals necessary for the performance of this agreement have been obtained.

Section 7 Independent Contractor

CMA hereby acknowledges and agrees that its status under this Agreement will be that of an independent contractor. CMA and its officers, agents and employees shall not represent themselves as Client employees to any third party, nor shall they make any claim to the Client, or to any other person or entity, for benefits or privileges granted to Client employees, including but not limited to, Unemployment and Workers Compensation benefits. CMA further acknowledges and agrees that the Client shall not take any deductions or withholdings from CMA's compensation to pay federal or state taxes, or any other assessment, cost, expense or obligation which CMA or its officers, employees or agents may incur as a result of CMA receiving compensation pursuant to this agreement.

Section 8 Modification

This Agreement contains the entire agreement of the parties. It may be amended in whole or in part from time to time in writing by mutual consent of the parties.

Scope of Services Overview

Municipal Solutions, Inc. is pleased to submit this scope of services overview. While this is a complete list of services we could provide, please be aware that we would be happy to tailor a contract to your specific needs once the scope of the project is defined.

This scope is divided into the following parts:

- I. Bond Anticipation Note Borrowings
- II. Long-term Serial Bond Borrowings
- III. Limited Disclosure
- IV. Full Disclosure
- V. Material Event Notices
- VI. Application for Funding to the NYS EFC State Revolving Fund Loan & Grant Programs
- VII. Application for WIIA & CFA Grants
- VIII. Long-Term Closing with NYS EFC the State Revolving Fund Loan & Grant Programs
- IX. Assistance in Determining Water/Sewer Rates
- X. General Financial Services

I. Bond Anticipation Note Borrowings

The following items are included:

- 1) Prepare a Notice of Sale to be used in the advertisement of the sale and, if over \$1,000,000, prepare an Official Statement.
- 2) If necessary, apply for municipal note insurance.
- 3) Prepare and convert Notice of Sale and Preliminary Official Statement files for upload to Municipal Solutions' website and electronic transfer to underwriters. Post results to website after the sale.
- 4) Conduct the BAN sale, make recommendation on the acceptance of the bids.
- 5) Prepare, convert and arrange for distribution of the Final Official Statement.

The fee for Note borrowing without an Official Statement will be \$2,900 or less. For a Note requiring the preparation of an Official Statement, the base fee will be \$4,400.

II. Long-Term Serial Bond Borrowing

The following items are included:

- 1) Plan the optimum maturity date for the annual payment of the bonds.
- 2) Prepare an Official Statement based on information provided to Municipal Solutions by the Town, bond counsel and other third parties.
- 3) Prepare a Notice of Sale to be used in the advertisement of the issue in compliance with the official compilation of codes, rules and regulations of the NYS Comptroller and the NYS Local Finance Law, and coordinate with bond counsel.
- 4) Complete the required debt statement and file with the state comptroller.
- 5) Apply for a credit rating.
- 6) Qualify the issue for municipal bond insurance.
- 7) Prepare and convert Notice of Sale and Preliminary Official Statement files for upload to Municipal Solutions' website, electronic transfer to underwriters and submission of Notice of Sale to the Bond Buyer. Post results to website after the sale.
- 8) When appropriate, qualify the issue to receive bids electronically using the IPREO electronic bidding platform. Conduct the sale and make a recommendation on the acceptance of the bids. Coordinate the closing with bond counsel, Town attorney, the successful bidder and the Depository Trust Company (if necessary).
- 9) Prepare, convert and arrange for distribution of the Final Official Statement.

The fee for Serial Bond borrowing under \$1,000,000 will be \$4,900 or less. For a Serial Bond borrowing requiring the preparation of an Official Statement, the base fee will be \$8,000.

III. Limited Disclosure

Transmission and electronic filing in a word searchable pdf format of the Town's **Limited Disclosure** of Annual Financial Statements and adopted budgets (if required) to EMMA.

The Town will provide full and complete copies of the audited annual financial statements and the annual adopted budget (if required) to Municipal Solutions, Inc. within six (6) months of the subsequent fiscal year. If audited financial statements are prepared, but not available within the six (6) month period, the Town agrees to provide a copy of the audit within sixty days from the date of its receipt, but in no event, not later than the end of its next fiscal year.

The fee for a Limited Disclosure filing is \$225.

IV. Full Disclosure

Preparation and filing of Statements of Annual Financial Information and Operating Data for those towns subject to **Full Disclosure**. The statements will be prepared and filed on EMMA within six (6) months of the end of the fiscal year per the Rule.

In addition to the filings of the Annual Financial Statements included in Section I. above, the Town agrees to provide to Municipal Solutions, Inc. all information required for preparation of each Statement of Annual Financial Information and Operating Data no later than 30 days prior to the due date of each statement.

The Town shall have the sole responsibility for determining the disclosure to be made in all cases. The Town shall review and provide approval of the content and form of all the information contained within the Statement of Annual Financial Information and Operating Data.

The fee for a Full Disclosure filing is \$2,000.

V. Material Event Notices

Preparation and filing of **Material Event Notices** on the MSRB EMMA website, including bond insurer downgrades, will be filed within 10 days of each event per the Rule.

The Town will notify Municipal Solutions, Inc. immediately upon the occurrence or immediately upon the Town's knowledge of an occurrence of each Event or noncompliance with the Rule and will immediately provide all information necessary for preparation of the notice of occurrence of each such Event or noncompliance with the Rule.

The Town shall review and provide approval of the content and form of all material event notices, with the exception of the following: bond or note calls, defeasances, rating changes and other required material event notices required to meet timely notice requirements. These exceptions will be filed automatically on the Town's behalf, unless the Town has notified Municipal Solutions, Inc. otherwise in writing.

The fee for a Material Event Notice filing is \$225, only if such filing is required.

VI. Application for Funding to the NYS EFC State Revolving Fund Loan & Grant Programs

The following items are included:

- 1) Submission of an application and any documentation required by the State Revolving Fund (SRF) Officials to close the loan with Environmental Facilities Corporation (EFC).
- 2) Review and approval of the budget to be use by EFC for monthly draws to ensure agreement with the project budget.
- 3) Prepare the debt statements and see to their filing with the clerk, New York State Comptroller and bond counsel, if appropriate.

- 4) Coordination of short – term closing with municipal officials, bond counsel, local attorney, and EFC.

VII. Application for WIIA & CFA Grants

- 1) Preparation and submission of NYS WIIA and CFA grant applications.

VIII. Long-Term Closing with the NYS EFC State Revolving Fund Loan & Grant Programs

The following items are included:

- 1) Coordination between RD personnel, SRF personnel, municipal officials, local attorney and bond counsel so that any information requested by the agency is received in a timely manner.
- 2) Advise the Town as to when the loan settlement may take place with RD and SRF. This would include planning maturity dates at the most opportune time during the Town's fiscal year.
- 3) Attendance at the Rural Development long-term loan closing.
- 4) Review of the SRF cost exhibit, borrowing history and proposed maturity schedules.

IX. Assistance in Determining Water/Sewer Rates

The following items are included:

- 1) Based on the existing operation and maintenance history assist the Town in developing a rate structure to cover operation and maintenance costs of the system to retire long-term debt.
- 2) Review the Town's current Equivalent Dwelling Units (EDU's) and recommend changes as needed to provide a fair and equitable cost/benefit structure for billing purposes.
- 3) Attend meetings with the Town's board or committee meetings, as necessary.

Capital project funding application and management fees for Sections VI through XI are dependent upon the scope of the project.

X. General Financial Services

General financial services that can be provided to the Town upon request during a capital project include:

- 1) Work with the engineer to establish a monthly cash flow needs for the term of the project.
- 2) Prepare a schedule of deadline dates to ensure contractors are paid monthly per contract documents.

- 3) Complete monthly paperwork to report progress and/or draw funds from funding agencies.
- 4) Provide information to the engineer for the pre-construction meeting concerning contractor responsibilities, processing of vouchers, certified payroll and MWBE reporting.
- 5) Assist the designated MWBE Officers in monitoring and reporting to EFC regarding MWBE/EEO monthly and quarterly reports, M/WBE utilization plans, good faith effort, and waivers and any other project related reports required by the funding agency.
- 6) Assist in the preparation of financial information, development of an operating budget and cash flow that may be used for public discussion in connection with the project.
- 7) Attend construction or other meetings, as required.
- 8) Advise the Town on required principal and interest payments at budget time.
- 9) Prepare various maturity schedules for Town officials to determine repayment of anticipated borrowed funds for planning purposes.
- 10) Application to secure CUSIP numbers for borrowings, as required.
- 11) Convert financial documents into useable formats for processing, if necessary.
- 12) Compliance with IRS, MSRB and SEC regulations, reviews and updates.
- 13) Assist in the completion and administration of other funding applications including but not limited to Emergency Services Loan, Appalachian Regional Commission (ARC) Grant, Local Government Efficiency (LGE) Grant, Environmental Protection Act (EPA) Grant, Rural Business Enterprise Grant (RBEG), Rural Business Services, Pre-Planning Development Grant (PPG) and Empire State Development (ESD) Grant.
- 14) Provide other financial consulting services as may be requested by the Town.

General Financial Services will be billed at an hourly rate of \$150.

Municipal Solutions, Inc. is registered as a recognized municipal advisor with the SEC (MS ID #867-00383) and the MSRB (MS ID #K0173) as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).