

**PROFESSIONAL SERVICE AGREEMENT  
BETWEEN  
THE COUNTY OF ALBANY  
AND  
HODGSON RUSS, LLP  
Resolution No. 506, adopted December 7, 2015**

THIS AGREEMENT by and between Albany County, Albany County Office Building, 112 State Street, Albany, New York, 12207 (hereinafter called the "COUNTY") and Hodgson Russ, LLP, with offices located at 677 Broadway, Suite 301, Albany, New York 12207, (hereinafter called the "CONSULTANT").

**WITNESSETH:**

WHEREAS, the COUNTY, on behalf of the Office of Audit and Control, Albany County Comptroller, has issued a Request for Proposals (RFP-2015-096 Bond Counsel) for the services of bond counsel to perform legal services as requested by the County, and

WHEREAS, the CONSULTANT has heretofore submitted a proposal to perform said professional legal services, and

WHEREAS, the COUNTY upon reviewing the proposal of the CONSULTANT finds said proposal satisfactory and has accepted same.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

**ARTICLE I. SCOPE OF SERVICES TO BE PERFORMED**

The COUNTY agrees to and hereby does retain and employ the CONSULTANT to act as bond counsel to perform legal advisory services as requested by the Albany County Comptroller, including, but not limited to, the County's issuance of general obligation debt, including refunding debt, BAN's, RAN's, disclosure in connection with the issuance of County obligations and related tax issues for capital projections that will require long term financing. As, bond counsel the CONSULTANT

will be required to give general advice to the COUNTY regarding the issuance of debt by the COUNTY, and provide the following services:

Analyze legal authority for each bond issue to ensure constitutional, statutory, and regulatory compliance and advise the COUNTY as to the selection of the parameters and structure of each bond issue.

Advise the COUNTY as to the appropriate steps to validly authorize and issue bonds and work with the COUNTY to obtain any required regulatory approvals and to hold any required hearings.

Prepare, review and deliver all required standard documents and material terms for the issuance of bonds in a timely manner which reserves for the COUNTY the opportunity to review and comment upon these documents. The required documents and their material terms include, but are not limited to, the following:

- Bond resolution;
- Official statements;
- Loan agreements and escrow deposit agreements
- Documentation relating to tax-exempt status of the bonds;
- Arbitrage certificates;
- Closing documentation;
- Provisions regarding the pledge of, among other things, assets, revenues, or property as security for repayment of bonds;
- General terms of the bonds such as medium of payment, date, authentication and transfer;
- Redemption provisions
- Ability to issue additional bonds;
- Establishment of additional funds, including the debt service fund, and the application thereof;
- General covenants of the issuer;
- Provisions for supplemental or amendatory resolutions;
- Remedies upon default;
- Defeasance and discharge of the lien created by the bond resolution;
- Letters of credit, remarketing agreements and reimbursement agreements for the implementation of the liquidity facility.

The CONSULTANT will be required to review and advise the COUNTY with regard to the terms of purchase contracts between the County and underwriter(s).

The CONSULTANT will be expected to render legal advice and any legal opinions necessary with regard to the legal issues related to the issuance and sale of

bonds, and, when requested, related to arbitrage, rebate and other tax matters, disclosure requirements, securities transactions, or other matters deemed necessary by the COUNTY.

The CONSULTANT will be required to attend meetings as requested by the COUNTY and cooperate fully with the County's staff, its financial adviser, and its underwriter in the preparation of any documents and the performance of any other work related to the issuance of bonds on behalf of the COUNTY.

The CONSULTANT will be required to render any other legal advice and opinions, and perform such other services as may be requested by the COUNTY pertaining to public finance, arbitrage and compliance with disclosure and other securities law requirements.

Assignments under this Agreement are as needed by the COUNTY, and, the COUNTY does not guarantee the assignment of any work to the CONSULTANT.

The parties hereto agree that the terms of the Request for Proposals, RFP-2010-148 Bond Counsel and CONSULTANT'S Proposal are incorporated herein, although not specifically attached hereto. In the event of any discrepancy, disagreement or ambiguity among the Agreement and the above incorporated documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) the Agreement; 2) The RFP; (3) The CONSULTANT'S proposal.

## **ARTICLE II. FEES**

In consideration of the terms of this AGREEMENT, the County hereby elects compensation to be based upon a Fixed Fee Basis as set forth in CONSULTANT'S Cost Proposal, a copy of which is annexed and specifically incorporated herein as Exhibit "A". The County agrees that any additional services not defined as a fixed fee service in Exhibit "A" will be paid at CONSULTANT'S hourly rate as set forth in the proposal. All fees shall be based upon those described in the Fixed Fee Basis Compensation section of Exhibit "A".

Payment for services rendered shall be made upon CONSULTANT'S submission of an Albany County Claim Form determining services rendered, including dates and times. All disbursements shall be specifically outlined. Upon acceptance of CONSULTANT'S Claim Form, payment shall be rendered.

### **ARTICLE III. AVAILABLE DATA**

All data relative to the work in the possession of the COUNTY or in the possession of the CONSULTANT shall be made available to the other party to this AGREEMENT without expense to the other party.

### **ARTICLE IV. COOPERATION**

The CONSULTANT shall cooperate with representatives, agents and employees of the COUNTY and the COUNTY shall cooperate with the CONSULTANT to the end that work may proceed expeditiously and economically.

### **ARTICLE V. EXTRA WORK**

If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of this AGREEMENT and constitutes Extra Work, the CONSULTANT shall promptly notify the COUNTY of the fact. The COUNTY shall be the sole judge as to whether or not such work is in fact beyond the scope of this AGREEMENT and whether or not it constitutes Extra Work. In the event that the COUNTY determines that such work does constitute Extra Work, it shall provide extra compensation to the CONSULTANT on a negotiated basis.

### **ARTICLE VI. ACCOUNTING RECORDS**

Proper and full accounting records shall be maintained by the CONSULTANT which records shall clearly identify the costs of the work performed under this AGREEMENT. Such records shall be subject to periodic and final audit by the COUNTY upon request. Such records shall be accessible to the COUNTY for a period of two (2) years following the date of final payment by the COUNTY to the CONSULTANT for the performance of the work contemplated herein.

### **ARTICLE VII. ASSIGNMENTS**

The CONSULTANT specifically agrees as required by Section 109 of the New York General Municipal Law that CONSULTANT is prohibited from assigning, transferring, conveying, subcontracting, or otherwise disposing of this AGREEMENT, or of CONSULTANT'S right, title or interest therein without the previous consent in writing of the COUNTY.

#### **ARTICLE VIII. RELATIONSHIP**

The CONSULTANT is, and will function as, an independent contractor under the terms of this AGREEMENT and shall not be considered an agent or employee of the COUNTY for any purpose, and the employees of the CONSULTANT shall not in any manner be or be held out to be, an agent or employee of the COUNTY.

#### **ARTICLE IX. INSURANCE**

The CONSULTANT agrees to procure and maintain without additional expense to the COUNTY, until final acceptance by the COUNTY, of the services covered by this AGREEMENT, insurance of the kinds and in the amounts provided under Schedule "A" attached hereto. Before commencing work, the CONSULTANT shall furnish to the COUNTY a Certificate(s) showing that the requirements of this Article are met and the Certificate(s) shall provide that the policy shall not be changed or canceled until thirty (30) days prior written notice had been given to the COUNTY, and naming the COUNTY OF ALBANY as an additional insured.

#### **ARTICLE X. TERM AND TERMINATION OF CONTRACT**

Assignment of new services under this AGREEMENT shall commence December 1, 2015 and shall continue in effect until November 30, 2016. This Agreement may be renewed for two (2) additional one (1) year periods at the COUNTY'S option.

The COUNTY shall have the right at any time to terminate the work required of the CONSULTANT by this AGREEMENT, by written notice of such termination provided to the CONSULTANT by the COUNTY, and, in the event of such termination of this AGREEMENT, the CONSULTANT shall be entitled to compensation for all work heretofore authorized and performed, pursuant to this AGREEMENT, such compensation to be in accordance with Article II - Fees of this AGREEMENT.

#### **ARTICLE XI. DELIVERY OF RECORDS**

In the event of the termination of this AGREEMENT, as provided in Article XI, hereof, all data and records pertaining to the AGREEMENT shall be delivered within twenty (20) days to the COUNTY or its duly authorized representative. In case of failure of the CONSULTANT to make such delivery on demand, then and in that event, the CONSULTANT shall be liable to the COUNTY for any damages it may sustain by reason thereof.

#### **ARTICLE XII. REPORTING DUTIES**

While providing specific services under this AGREEMENT, the CONSULTANT shall report regularly to the COUNTY, its agents and officials, as directed.

#### **ARTICLE XIII. DISSOLUTION**

In the event of dissolution of the CONSULTANT as a corporation or partnership during the existence of this AGREEMENT, the CONSULTANT shall give thirty (30) days notice in writing to the COUNTY in advance of such dissolution.

#### **ARTICLE XIV. LICENSES**

The CONSULTANT shall at all times obtain and maintain all licenses required by the New York State to perform the legal services required under this AGREEMENT.

#### **ARTICLE XV. NON-DISCRIMINATION REQUIREMENT**

The CONSULTANT shall not discriminate against any resident or employee of the COUNTY on the basis of race, color, creed, national origin, gender, handicap or source of payment.

#### **ARTICLE XVI. NON-APPROPRIATIONS CLAUSE**

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the COUNTY for payment, the COUNTY will immediately notify the CONSULTANT of such occurrence and this AGREEMENT

shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the COUNTY of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

#### **ARTICLE XVII. APPLICABLE LAW**

This AGREEMENT shall be construed for all purposes under the laws of the State of New York.

#### **ARTICLE XVIII. MACBRIDE PRINCIPLES**

The CONSULTANT hereby represents that said CONSULTANT is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 for 1993, in that said CONSULTANT either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles. In the event of a violation of this stipulation, the COUNTY reserves all rights to take remedial measures as authorized under Section 4 of Local Law No. 3 for 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the CONSULTANT in default and/or seeking debarment or suspension of the CONSULTANT.

#### **ARTICLE XIX. INVALID PROVISIONS**

It is further expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court or competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either COUNTY or CONSULTANT in their respective rights and obligations contained in the valid covenants, conditions or provisions in this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this

AGREEMENT to be executed on the date and year opposite their respective names.

**COUNTY OF ALBANY**

Dated: 4/12/16

By: 

Daniel P. McCoy  
Albany County Executive

Philip F. Calderone  
Deputy County Executive

**HODGSON, RUSS, LLP**

Dated: March 31, 2016

By: 

A. Joseph Scott, III  
General Partner



STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS.:

On the \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, personally appeared Daniel P. McCoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS.:

On the 11<sup>th</sup> day of April, 2016, before me, the undersigned, personally appeared Philip F. Calderone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Michael A. Lalli  
NOTARY PUBLIC

MICHAEL A. LALLI  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 01LA6322012  
Qualified in Albany County  
My Commission Expires March 30, 2019

STATE OF NEW YORK )  
COUNTY OF ALBANY ) SS.:

On the 31st day of March, 2016, before me, the undersigned, personally appeared A. Joseph Scott, III personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Bonnie L. DeFreest  
NOTARY PUBLIC

Bonnie L. DeFreest  
Notary Public, State of New York  
Qualified in Schenectady County  
No. 01DE5076434  
Commission Expires April 21, 2019

## SCHEDULE "A"

### INSURANCE COVERAGE

The kinds and amounts of insurance to be provided are as follows:

**Worker's Compensation and Employers Liability Insurance:** A policy or policies providing protection for employees in the event of job-related injuries.

**Automobile Liability Insurance:** A policy or policies with limits of not less than \$1,000,000 combined for each accident because of bodily injury, sickness or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of any automobile.

**General Liability Insurance:** A policy or policies of comprehensive all-risk insurance with limits of not less than:

Liability For:	Limit:
Bodily Injury	\$1,000,000
Personal Injury	\$1,000,000
Property Damage	\$1,000,000

**Legal Malpractice Insurance:** CONSULTANT shall be required to provide proof that the firm and its attorneys are covered by a malpractice insurance policy insuring against the professional liability risks associated with the services to be rendered under this AGREEMENT.

**EXHIBIT "A"**  
**Consultant's Cost Proposal**

2. Coordinated with Majority Counsel on the review and completion of the SEQOR Process.

3. Conducted tax due diligence pursuant to a written questionnaire and a telephone conference with staff in the County Comptroller's office.

4. Prepared and reviewed IRS Post Compliance Policies with staff of the County Comptroller.

5. Arranged for pre-closings of financings to take place at the County Office Building, with Bond Counsel organizing the documents and the securing of necessary signatures.

Over the past five (5) years, there has been increased scrutiny of tax-exempt financings by IRS and SEC officials. We continue to monitor these actions and advise the County when necessary.

If retained by the County pursuant to this RFP, we would suggest scheduling a meeting with the appropriate staff to discuss current procedures and any suggestions for modifications.

## SECTION V. COST PROPOSAL SECTION

### *a. Submit a cost proposal for the services described in this RFP.*

As to the matter of our fees, it is customary for the Firm to reach an agreement with our clients as to the fees applicable to various services for which we are retained prior to performing such services. The amount of our fees is dependent on, among other things, our fee structure, the amount of time and effort it would take to complete the transaction, the amount of responsibility assumed by us, and the complexities and number of parties to the transaction. For example, the use of credit enhancement, whether in the form of a letter of credit or bond insurance, will affect the complexity of the financing. We are prepared to offer the County three (3) alternative fee arrangements for bond counsel services. In addition, we are willing to discuss with the County any alternative mutually agreeable formula for the payment of services.

### Hourly Billing Basis

As is traditional for law firms, we have established a system of hourly charges which are posted to each client account for internal control purposes. Different billing rates are assigned to each member of the professional staff (including paraprofessionals). These rates are adjusted from time to time in order to give effect to changes in experience and responsibility.

The current standard rates for the individuals expected to be assigned to the County are described as follows:

<u>Attorney</u>	<u>Standard Hourly Rate</u>
George W. Cregg, Jr.	\$380.00
A. Joseph Scott, III	\$430.00
Michael T. Logan	\$210.00

<u>Paralegal</u>	<u>Standard Hourly Rate</u>
Pamella D. Weisberg	\$190.00

As described in the section of this Proposal entitled Project Team, we would expect a team approach of Mr. Cregg, Mr. Scott, and Mr. Logan to be the attorneys assigned to the County. Ms. Weisberg would also be part of the Project Team and available to assist in providing services to the County.

We will offer the County two (2) hourly fee options. If the County was to select one of the hourly fee options, we would provide the County with detailed monthly accounting reports showing the amount of charges posted to the County's account and a description of services performed. Bills for both services and expenses would be delivered when the obligations are issued. The Project Team would be responsible to keep the County informed of the amount of charges posted to the County account.

The discounted hourly fee options we are prepared to offer to the County are as follows:

**Option One. Hourly based on Blended Rate.** While the above table sets forth our standard current hourly rates, we have also utilized and are willing to utilize, at the option of the County, a blended rate or rates for all attorneys. We propose a single blended rate of \$375/hr for all attorneys, including senior partners and junior partners. We fully expect the proportion of senior partners' time invested in this engagement to be substantial and this rate represents a discount of partners' normal billing rates. This proposed blended rate would increase during the term of the engagement as follows:

Year 1:	\$375.00 / hr.
Year 2:	\$390.00 / hr.
Year 3:	\$405.00 / hr.
Year 4:	\$420.00 / hr.

**Option Two. Hourly based on Discounted Rate.** Another variation from our standard rates listed above, which we are willing to utilize, would be negotiated discounted rates for attorneys' and paralegals' time. The Firm would be compensated on an hourly discounted basis for all attorneys' and paralegals' services. We propose a discounted rate of 10% of our standard billing rates. Our standard billing rates would be subject to normal adjustment during the term of our engagement.

#### **Fixed Fee Basis**

A primary objective of the Firm in connection with the services which we perform as bond counsel is to provide issuers with a reasonable degree of certainty as to the expected fee for an issue. We understand the importance to the County of having a reasonable degree of certainty as to the fee for its financings. Accordingly, we are also prepared to offer the County a fixed fee arrangement for the proposed bond and note issues based on the amount of bonds and notes issued.

The fixed fee arrangements described below are based on several assumptions. These assumptions include that the Firm will not be responsible for legal work involving real estate and environmental issues. The additional assumption is that, except as hereafter provided, our duties as bond counsel to the County would consist of the tasks described in Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 of the County's Request for Proposal. Our fixed fee arrangement would not include the preparation of disclosure material (e.g., an official statement) or the rendering of advice and opinions regarding extensive or unusual arbitrage, rebate or other tax issues. Our fixed fee arrangement would include the review of disclosure material (e.g., an official statement) and the rendering of advice and opinions regarding arbitrage, rebate or other tax issues that customarily or typically arise in the course of a typical municipal finance transaction. We would propose to bill for any such additional services at our normal hourly rates. We would in all cases discuss with you any extraordinary services to be performed by us

prior to our performing them. The fixed fee schedule described below would remain unchanged during the term of our engagement.

The fixed fee option we are prepared to offer to the County is as follows:

- Fees for preparation of bond authorization resolutions:

No charge

- Fees for Bond Anticipation Note issue ("BANs"):

\$0 - Base Fee  
\$.50 - for each issue of BANs \$1,000 principal amount up to \$3,999,999  
\$.40 - per \$1,000 on each issue of BANs \$4,000,000 principal amount and above

No minimum fee

- Fees for each Serial Bond issue ("Bonds")<sup>1</sup>:

\$0-	Base Fee	
	First \$4,999,000	\$1.00 per thousand
	Amount from \$5,000,000 to \$5,999,000	.50 per thousand
	Amount over \$6,000,000	.40 per thousand
	No minimum fee	

#### Additional Charge for EFC Financings

In connection with any water or sewer infrastructure project, Albany County may consider financing the project by participation in financing programs offered by the New York State Environmental Facilities Corporation ("EFC"). If the County was to finance any capital project with EFC, our fees would be increased to reflect the additional work related to the EFC financing program. Our additional fees would be determined based on our normal hourly rates. We would agree to cap our additional legal fees for services as Bond Counsel to \$4,500.

#### Disbursements

The above fees are net of disbursements, and we would expect to bill the County for reimbursement of disbursements based on our Disbursement Policy, a copy of which is attached hereto. It is our practice to bill for reimbursement of disbursements by detailed computerized lists which are distributed to our clients as part of the bill. The actual amount of disbursements for a particular financing is difficult to predict. The typical total amount of disbursements for a private sale by a municipality of bond anticipation notes would equal approximately \$100.00 (representing disbursements for photocopying, telephone, overnight courier and postage). The typical charge for disbursements for a public sale of bonds would equal approximately \$300-\$500.

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<sup>1</sup> Please note that this fee schedule represents a significant discount under our original fee arrangement (provided in 2002) and no increase over our current arrangement.