



SUSAN A. RIZZO
COUNTY COMPTROLLER

COUNTY OF ALBANY
OFFICE OF THE COMPTROLLER
112 STATE STREET, ROOM 1030
ALBANY, NEW YORK 12207-2021
(518) 447-7130

EDWARD L. DOTT
EXECUTIVE DEPUTY COMPTROLLER

MICHAEL W. WHEELER
EXECUTIVE DEPUTY COMPTROLLER

February 8, 2023

Hon. Andrew Joyce, Chairman
Albany County Legislature
112 State Street – Suite 710
Albany, New York 12207


RE: RLA – Renewal of Agreement between the County of Albany and Capital Markets Advisors, LLC

Dear Hon. Andrew Joyce,

The Department of Audit and Control is requesting approval for the renewal of the agreement between the County of Albany and Capital Markets Advisors, LLC. CMA's current contract as the County's financial advisors expired on December 31, 2022, but has two consecutive 1 year automatic renewals incorporated into that contract. Attached is a copy of the contract, on page 2, Article 2, you will find the scope of services previously performed by CMA.

Should you have any questions, please contact me at (518) 447-7130.

Sincerely,



Susan A. Rizzo
Albany County Comptroller

CC: Patrick Collings, Counsel to Chair
Rebekah Kennedy, Majority Counsel
Arnis Zilgme, Minority Counsel
David Reilly, Commissioner of Management and Budget



DANIEL P. MCCOY
COUNTY EXECUTIVE

COUNTY OF ALBANY
OFFICE OF THE COUNTY ATTORNEY
COUNTY OFFICE BUILDING
112 STATE STREET, ROOM 600
ALBANY, NEW YORK 12207-2021
(518) 447-7110 - FAX (518) 447-5564
WWW.ALBANYCOUNTY.COM

EUGENIA KOUTELIS CONDON
COUNTY ATTORNEY

JOHN W. LIGUORI
DEPUTY COUNTY ATTORNEY

MEMORANDUM

DATE: September 17, 2020

TO: Ransom Moore

FROM: Robert Franklin
Assistant County Attorney

Agreement Between The County of Albany
And Capital Markets Advisors, LLC
Resolution No: 99 of 2020

Attached herewith is one agreement(s) of the above referenced agreement.

Kindly forward the agreement to the contractor.

Thank you.

TD/TB
Enclosure

AGREEMENT
BETWEEN THE COUNTY OF ALBANY
AND CAPITAL MARKETS ADVISORS, L.L.C.
FOR FINANCIAL ADVISORY SERVICES

Resolution No. 99 of 2020 (adopted March 9, 2020)

THIS AGREEMENT is made by and between the County of Albany, a municipal corporation organized under the laws of the State of New York, acting by and through its County Executive, with a principal office at the Albany County Office Building, 112 State Street, Albany, New York 12207 (hereinafter, the "County"), and Capital Markets Advisors, L.L.C., a New York limited liability company with a principal address located at 11 Grace Avenue, Suite 208, Great Neck, New York 11021 (hereinafter, the "Contractor"). The County and the Contractor may be referred to individually as a "[P]arty" and collectively as the "[P]arties" as appropriate.

WITNESSETH:

WHEREAS, the County has a need for financial advisory services for the Albany County Comptroller, said request having been denominated RFP #2020-007, and having been issued by the Albany County Department of General Services Purchasing Division (hereinafter called the "Purchasing Division") on January 2, 2020 and published on January 9, 2020 (hereinafter called the "RFP"); and

WHEREAS, in response thereto, the Contractor has submitted a proposal on January 24, 2020 (hereinafter called the "Contractor's Proposal") to provide the aforesaid financial advisory services; and

WHEREAS, the County has accepted the Contractor's Proposal to provide the aforesaid financial advisory services as the lowest responsible bidder; and

WHEREAS, the Albany County Legislature has authorized the County Executive to enter into an Agreement for the aforesaid financial advisory services for the period beginning on January 1, 2020 and concluding on December 31, 2020 via Resolution No. 99 of 2020, adopted on March 9, 2020; and

WHEREAS, in furtherance thereof, the parties hereto desire to formalize their understanding and agreement regarding the provision of the aforementioned financial advisory services, and to execute a fully-integrated Agreement with respect thereto;

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

ARTICLE 1. THE CONTRACT DOCUMENTS; INTERPRETATION

- 1.1 The Contract Documents consist of the following: this Agreement; the RFP, which is incorporated herein and made a part hereof in its entirety by reference; and the Contractor's

Proposal, which is incorporated herein and made a part hereof in its entirety by reference (collectively called "the Agreement" hereinafter).

- 1.2 In the event of any discrepancy, disagreement, or ambiguity among the documents which comprise this Agreement, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement, or ambiguity: 1) this Agreement; 2) the RFP; 3) the Contractor's Proposal.

ARTICLE 2. SCOPE OF SERVICES TO BE PERFORMED BY CONTRACTOR

The Contractor shall perform financial advisory services as requested by the County. These services shall include:

- 2.1 Orchestrate the debt issuance process to ensure that it is completed in a timely and cost-effective manner.
- 2.2 Analyze the conditions surrounding the issuance of County obligations, including the status of the County's credit rating and current conditions affecting the marketability of County bonds and notes; including in this area will be the analysis of all issues relating to any refundings of outstanding general obligation bonds. Evaluate the funding needs of the project and the resources available to the County to repay any debt to be issued. Recommend a financing plan that will result in the most favorable cost of capital to the County.
- 2.3 Perform, or assist the County in performing, the preliminary structuring of general obligation bond issuance and the final structuring of each offering. Advise and assist the County with regard to obtaining bond issuances.
- 2.4 Assist the County in the selection of the underwriter(s) by defining and drafting the selection criteria for the Request for Proposals (RFP), including each firm's experience and performance with similar financing, and proposed fees and expenses.
- 2.5 Evaluate the responses to the RFP, including an independent review of the effective interest cost of each response, and make a recommendation as to the selection of the underwriter(s). Appear before the County Legislature to compare the responses received to other issues currently on the market and recommend the award.
- 2.6 Serve as liaison between the County and the underwriter(s) to ensure the interests of the County are well-articulated and observed throughout each financing. Organize finance team meetings, set agendas, establish schedules, and monitor each issue's progress.
- 2.7 Assist the County in the preparation of a clear and concise presentation of the financing. Provide the rating analysts with financial rating analysis that compares the County's credit quality to that of other comparable issuers. Prepare comprehensive debt affordability analyses to demonstrate the ability of the County to afford new debt. Serve as a liaison between the County and the credit rating analysts to answer any questions and to resolve any concerns regarding the County, each project, and each financing.

- 2.8 Assist the County and its bond counsel in the preparation of offering or official statements or other necessary documents and in the review or writing of position papers or speeches, and assist the underwriter(s) in complying with SEC Rule 15(S) 2-12 regarding adequate initial and continuing disclosure. Attend meetings as needed and cooperate fully with the County's staff, its bond counsel, and its underwriter(s) in the preparation of any documents and the performance of any work related to the issuance of bonds on behalf of the County.
- 2.9 Negotiate the terms [interest rates, re-offering yields, call features, and the compensation of the underwriter(s), etc.] with underwriter(s) on behalf of the County with the sole objective of obtaining the most efficient financing cost. Prepare a pricing book several days in advance of each sale to provide a basis for making pricing decisions. The pricing book shall contain information on comparable issues in the market and update on recent market trends, including the expected demands of investors interested in the particular offering and recommend initial levels for all financing terms so that the County can make informed decisions during the negotiation process.
- 2.10 Arrange for the transfer of funds and for the investment of the proceeds, subject to arbitrage restrictions, to ensure that they are available when needed for the project(s) being financed.
- 2.11 Monitor market reception and re-offering yields, track the unsold balance of the issue held by underwriter(s) on a periodic basis and compare the terms of the sale to the rates that the County received. Prepare a report for the County that analyzes the sale by market absorption, level of bids compared to other issues on the market, market conditions, and underwriting spreads.

ARTICLE 3. COMPENSATION

The County agrees to compensate the Contractor at the following rates for the various services:

1. For bond issues: EIGHTY-FIVE (\$.85) CENTS per each ONE THOUSAND (\$1,000.00) DOLLARS of bonds issued with a minimum fee of TWENTY-FOUR THOUSAND, FIVE HUNDRED AND 00/100 (\$24,500) DOLLARS.
2. For note issues: FORTY-FIVE (\$.45) CENTS per each ONE THOUSAND (\$1,000.00) DOLLARS of notes issued with a minimum fee of TWELVE THOUSAND, FIVE HUNDRED AND 00/100 (\$12,500.00) DOLLARS.
3. For refunding bond issues: NINETY-FIVE (\$.95) CENTS per each ONE THOUSAND (\$1,000.00) DOLLARS of bonds issued with a minimum fee of THIRTY THOUSAND (\$30,000.00) DOLLARS.
4. For continuing disclosure: TWO THOUSAND, FIVE HUNDRED (\$2,500.00) DOLLARS, annually inclusive of any required Event Notices.

5. For services unrelated to a bond or not issuance: an hourly fee of ONE HUNDRED NINETY-FIVE (\$195.00) DOLLARS per hour.

The Contractor shall not charge its clients for travel time, mileage, meals, lodging, supplies, telephone, or conference calls. Other transaction related costs shall be borne by the County, including, but not limited to: Bond Counsel, rating agency, escrow agent(s), the Bond Buyer (to publish bond sale notices) and a financial printer.

ARTICLE 4. PAYMENT

Payment shall be made to the Contractor upon the Contractor's submission of a properly executed Albany County Claim Form, plus all supporting documentation, to Albany County Comptroller's Office, and acceptance by the County of the Claim Form.

ARTICLE 5. TERM OF THE AGREEMENT

This Agreement shall commence on January 1, 2020 and continuing in effect until December 31, 2022. Upon the conclusion of this term, the Parties, upon mutual agreement, can renew this Agreement on two (2) consecutive one (1) year intervals. Renewals of this Agreement shall be contingent upon the renewal of all of its terms; partial renewals shall not be accepted by the County.

ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

- 6.1 This Agreement may be terminated by the County or the Contractor as follows:

6.1.1 The County may terminate this Agreement if the Contractor refuses or fails to supply enough properly skilled workers or proper materials to meet any of its requirements, if the Contractor fails to make payment to County-approved subcontractors for materials or labor, or disregards laws, ordinances, or rules and regulations or orders of a public entity having jurisdiction over the work, or if the Contractor is substantially in breach of any of its provisions. Additionally, the County may, without cause, order the Contractor in writing, to suspend, delay, or interrupt the work in whole or in part for such period of time as the County may determine.

6.1.2 The Contractor may terminate this Agreement if the County is substantially in breach of it.

- 6.2 In the event of a breach by the Contractor, the Contractor shall pay to the County all direct damages caused by such breach, including, but not limited to, all sums expended by the County to procure a substitute Contractor to complete the work, together with the County's own additional costs incurred in procuring a substitute Contractor.

ARTICLE 7. ASSIGNMENT

- 7.1 Pursuant to §109 of the General Municipal Law, the Contractor is prohibited from assigning, transferring, conveying, subcontracting, or otherwise disposing of this Agreement, or of its right, title or interest therein, to any other person or entity without the prior written consent of the County.
- 7.2 The Contractor shall not subcontract for any portion of the services required under this Agreement without the prior written approval of the County. Any such subcontractor shall be subject to the terms and conditions of this Agreement and any additional terms and conditions the County may deem necessary or appropriate.

ARTICLE 8. AVAILABLE DATA

All technical or other data relative to this Agreement in the possession of the County or in the possession of the Contractor shall be made available to the other party to this Agreement without expense to the other party.

ARTICLE 9. COOPERATION

Contractor shall cooperate with the agents, representatives, and employees of the County and the County shall cooperate with the agents, representatives, and employees of the Contractor to ensure that the work delineated herein proceeds and concludes as expeditiously as possible.

ARTICLE 10. NON-DISCRIMINATION

In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor agrees that neither it nor its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions, or privileges of employment.

ARTICLE 11. EXTRA WORK

If the Contractor is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Contractor shall promptly notify the County of that opinion. The County shall reasonably determine 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 the County determines such work does constitute extra work, it shall provide extra compensation to the Contractor on a negotiated basis.

ARTICLE 12. COMPLIANCE WITH MACBRIDE PRINCIPLES

Contractor hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 for 1993, in that Contractor 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 its 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 § 4 of the said Local Law No. 3 for 1993 including, but not limited to, imposing sanctions, enforcing compliance, recovering damages, declaring the Contractor in default, and/or seeking debarment or suspension of the Contractor.

ARTICLE 13. IRANIAN ENERGY SECTOR DIVESTMENT

Contractor hereby represents that Contractor is in compliance with New York State General Municipal Law Section 103-g entitled "Iranian Energy Sector Divestment," in that Contractor has not:

- (a) Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (b) Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five (45) days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

ARTICLE 14. RELATIONSHIP OF THE PARTIES

Contractor 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. The agents, representatives, and employees of the Contractor shall not in any manner be, or be held out to be, the agents, representatives, or employees of the County.

ARTICLE 15. INDEMNIFICATION

Contractor shall defend, indemnify, and save harmless the County, and its employees, from and against any and all claims, damages, losses, and expenses (including, but not limited to, reasonable attorney's fees) arising out of or in consequence of any third party claim to the extent caused by the negligent or intentionally wrongful act or omission of the Contractor, its agents, representatives, or employees, to the extent of its or their responsibility for such claims, damages, losses, or expenses.

ARTICLE 16. INSURANCE COVERAGE

- 16.1 Contractor shall procure and maintain for the entire term of this Agreement, without additional expense to the County, insurance policies of the kinds and in the amounts provided in the Schedule A attached hereto and made a part hereof. The insurance policies shall name the County as an additional insured. Such policies may only be changed upon thirty (30) days prior written approval by the County.
- 16.2 Contractor shall, prior to commencing any of the services outlined herein, furnish the County with Certificates of Insurance showing that the requirements of this article have been met. The Contractor shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued certificate(s). No work shall be commenced under this Agreement until the Contractor has delivered the Certificates of Insurance to the County. Upon failure of the Contractor to furnish, deliver, and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued, or terminated.
- 16.3 As required by Section 108 of the N.Y. General Municipal Law, this Agreement shall be of no force and effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Agreement, all employees engaged thereon in compliance with the provisions of the N.Y. Workers' Compensation Law. The Contractor shall require any subcontractor authorized by the County to do likewise for all of their employees engaged thereon, all in compliance with the provisions of the N.Y. Workers' Compensation Law and of Schedule A of this Agreement.

ARTICLE 17. NON-COLLUSIVE BIDDING

By execution of this Agreement, Contractor warrants, under penalty of perjury, that to the best of knowledge and belief, the prices communicated to the County in establishing the costs of goods and services covered in this Agreement have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition. Contractor warrants that it is in compliance with NYS General Municipal Law Sec. 103-d with regard to the prices of goods and services covered in this Agreement.

ARTICLE 18. NO WAIVER OF PERFORMANCE

Failure of either party to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of said party's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the other party.

ARTICLE 19. ACCOUNTING RECORDS

- 19.1 Contractor shall maintain complete and proper accounting records that shall clearly identify all costs associated with and revenue derived from the work performed under this

Agreement. Such records shall be subject to periodic and final audit by the County upon request.

- 19.2 Contractor shall provide the County and authorized State and/or Federal personnel access to any and all books, documents, records, charts, software, or any other information relevant to performance under this Agreement, immediately upon request.
- 19.3 Contractor shall retain all of the above information for six (6) years after final payment or the termination of this Agreement, and shall make such information available to the County and authorized State and/or Federal personnel during such period.

ARTICLE 20. NON-APPROPRIATIONS

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 under this Agreement. The County will immediately notify the Contractor 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 21. CHANGE IN LEGAL STATUS OR DISSOLUTION

During the term of this Agreement, the Contractor agrees that, in the event of its reorganization or dissolution as a business entity or change in business, the Contractor shall give the County thirty (30) days written notice in advance of such event.

ARTICLE 22. LICENSES

The Contractor shall at all times obtain and maintain all licenses required by New York State, or other relevant regulating body, to perform the services required under this Agreement.

ARTICLE 23. PARTIAL INVALIDITY

If any term, part, provision, section, subdivision, or paragraph of this Agreement shall be held to be unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions, or paragraphs.

ARTICLE 24. HEADINGS – CONSTRUCTION

The headings appearing in this Agreement are for the purpose of easy reference only and shall not be considered a part of the Agreement or in any way to modify, amend or affect the provisions hereof.

ARTICLE 25. NOTICES

All notices, consents, waivers, directions, requests, or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally, sent by registered or certified United States mail, postage prepaid, or, with the prior consent of the receiving party, dispatched via facsimile transmission.

ARTICLE 26. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties agree that the designated venue is Albany County, New York.

ARTICLE 27. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and no representations or promises have been made except as expressly set forth herein.

ARTICLE 28. MODIFICATION

This Agreement may only be modified by a formal written amendment executed by the parties.

ARTICLE 29. EXECUTION OF DOCUMENTS

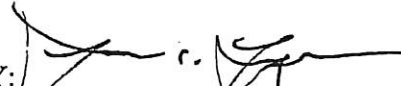
This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

(The Rest Of This Page Left Intentionally Blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) hereunder set forth.


COUNTY OF ALBANY

DATED: 9/16/2020

BY: 
Daniel P. McCoy
Albany County Executive
or
Daniel C. Lynch, Esq.
Deputy County Executive

CAPITAL MARKETS ADVISORS, L.L.C.

DATED: _____

BY: 
President

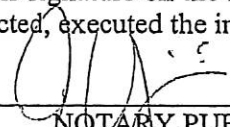
STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the ____ day of _____, 2020, 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 16th day of September, 2020, before me, the undersigned, personally appeared Daniel C. Lynch, 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
JOHN W. LIGUORI
Notary Public, State of New York
Qualified in Albany County
No. 5012488
Commission Expires June 15 2023

STATE OF NEW YORK)
COUNTY OF ~~ALBANY~~ _____) SS.:
 Nassau

On the 1st day of September, 2020, before me, the undersigned, personally appeared Richard Tortora 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.

Linda Lorentz
NOTARY PUBLIC

