

STATE OF DELAWARE
PROFESSIONAL SERVICES CONTRACT
for
FINANCIAL ADVISORY SERVICES
between the
STATE OF DELAWARE,
DEPARTMENT OF FINANCE AND THE
DELAWARE TRANSPORTATION AUTHORITY
and
PUBLIC FINANCIAL MANAGEMENT, INC.

THIS AGREEMENT, entered into effective as of the 1st day of August, 2010, by and between the *State of Delaware* (“*Delaware*”), representing the *Department of Finance* (“*DOF*”), the *Delaware Transportation Authority* (“*DTA*”) and any other State agency that may require advisory services and *Public Financial Management, Inc.* (“*PFM*”) *PFM* also referred to as “Financial Advisor”, WITNESSETH THAT:

WHEREAS, *Delaware* desires to engage PFM as its Financial Advisor to render certain consulting services to DOF, DTA and other State agencies, as needed.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Employment of the Financial Advisors

DOF, DTA and, from time to time, other State agencies agree to engage PFM and PFM agrees to perform services as set forth in this Contract. These services shall be referred to as the “engagement.”

The Financial Advisor is an independent contractor and shall not be deemed or considered an employee of the State of Delaware.

2. Compensation

DOF and DTA agree to pay PFM based on the rates set forth in Appendix 1.

3. Scope of Services

PFM will serve as primary financial advisors for DOF and DTA and shall perform the services outlined in Appendix 2.

The contract between DOF, DTA and PFM shall consist of this contract, the purchase order, the request for proposal (“RFP”) and the Financial Advisor’s proposals. In the event there is a discrepancy between any of these contract documents, the following order of documents prevails: the contract, the purchase order, the RFP and the Financial Advisor’s proposal. No other documents shall be considered. These documents shall contain the entire agreement between DOF, DTA and PFM.

Should conditions not now anticipated preclude Financial Advisor from completing its deadlines as contemplated, Financial Advisor shall promptly advise DOF or DTA promptly and take such further action as deemed necessary by mutual consent.

4. Personnel

All of the services required under this contract shall be performed by PFM or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services. All personnel assigned to work shall have been specified in Financial Advisor’s proposal and shall not be changed without the prior written consent of DOF and DTA.

No work or services shall be subcontracted except as approved in writing by DOF and DTA.

The Financial Advisor represents that it either currently has or will secure, at its own expense, all personnel required in performing the services under this contract.

The Financial Advisor guarantees that its organization is an equal opportunity employer. No person or group shall be excluded from participation, denied any benefits, or subjected to discrimination on the basis of race, color, religion, gender, national origin or disabilities.

5. Notices and Inquiries

PFM shall direct all written correspondence including invoices to the attention of the Director of Bond Finance, Department of Finance, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, Telephone (302) 577-8988 Fax (302) 661-7263.

6. Assurances

The Financial Advisor hereby assures and certifies that it will comply with and abide by the pertinent Federal, State, County, and local laws, regulations, policies, guidelines and requirements of the jurisdiction in which the contract is performed. Also, the Financial Advisor assures and certifies with respect to the contract that:

- a. The Financial Advisor is legally authorized to enter into this contract.
- b. The Financial Advisor shall establish safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being motivated by a desire for unlawful gain for themselves or others, particularly those with whom they have family, business, or other ties.

- c. The Financial Advisor presently holds valid occupational licenses issued by the State of Delaware's Division of Revenue.
- d. The Financial Advisor certifies that it has professional liability insurance in the amount of at least \$1 million. The Financial Advisor agrees to provide evidence of such insurance at the request of DOF.
- e. The Financial Advisor is, and will remain for the duration of the contract, in good financial standing with the State of Delaware and will provide proof of same upon request.

7. Time of Performance

The services of PFM are to become effective as of the date of the contract and continue for a three-year period. DOF, DTA and PFM have the option to renew the contract for two additional one-year extensions based on the mutual written agreement of both parties. At the end of the second additional one-year extension, a new procurement process will be undertaken pursuant to 29 Delaware Code, Chapter 29, except in the event of a changed or unforeseen condition and a change order is determined to be necessary pursuant to 29 Delaware Code, Section 6904(f).

8. Termination

DOF may terminate its agreement with PFM, with or without cause, at any time by giving written notice to PFM of such termination. The notice shall state the effective date of termination. Upon such termination, the Financial Advisor will be paid for the hours of work actually completed up to the date of termination and shall not undertake any further work or perform further services except to complete any pending work as may be mutually agreed upon by the parties in writing.

The Financial Advisor shall not be relieved of any liability to the State for damages suffered by it by virtue of any breach of the contract by the Financial Advisor. DOF may withhold any payments to the Financial Advisor for the purpose of set off for such damages but in doing so shall not waive any and all other remedies available to it by virtue of Financial Advisor's breach.

9. Changes

DOF or DTA may request changes in the scope of services of the Financial Advisor to be performed under this contract. Such changes, including an increase or decrease in the amount of Financial Advisor's compensation, shall be mutually agreed upon in writing by and between DOF and the Financial Advisor and shall be incorporated in written amendments to the contract as permitted by law.

10. Assignability

Neither party shall assign or otherwise transfer any interest in this contract without the prior written consent of the other party.

11. Interest of the Financial Advisor

The Financial Advisor covenants that PFM presently has no interest and shall not acquire any interest, direct or indirect, which would create a conflict that would materially impact Financial Advisor's ability to perform the services required to be performed under this contract. The Financial Advisor further covenants that it shall not assign to or employ in the performance of this contract any person having any such interest. The Financial Advisor will notify DOF of any additional work with the entity under contract. The Financial Advisor is an independent contractor and is not deemed to be an employee or an official of the State or its entities and in the performance of its obligations under this contract is not acting as a business broker, realty broker, lawyer, or accountant, but only as an agent and Financial Advisor to the State. The Financial Advisor agrees that it will not participate as an underwriter in the underwriting of any new issues of bonds of either DOF or DTA as issuer as long as this agreement remains in effect.

12. Responsibility for Damage Claims

The Financial Advisor shall be responsible for all damages or injury to persons or property of any nature resulting from any act, omission, neglect or misconduct in the manner or method of the performance of its duties under the terms of the contract

13. Indemnification

Financial Advisor will defend, indemnify, and hold harmless the State of Delaware, DOF, DTA, and any other State agency for which Financial Advisor is performing work, their officers, employees, agents, successors, or assigns from and against any and all third party claims, costs, judgments, settlements, or liabilities, including legal fees, of any form whatsoever, in law and equity, to the extent such claims are caused by Financial Advisor's negligence or intentional misconduct.

14. Limitation of Liability, Funding, Default and Remedies

Limitation of Liability

It is expressly agreed by the Financial Advisor, its successors, heirs and assigns that absent any breach or default by the State hereunder:

The State's obligations to pay any amounts due or perform any covenants requiring or resulting in the expenditure of money are contingent upon and expressly limited to the extent of specific appropriations made to fund this Agreement; and nothing contained in any other Paragraph of this contract shall be construed as creating any monetary obligation on the part of the State beyond such current and specific appropriations. For the purposes of this Paragraph the words "appropriate" and "appropriation(s)" shall refer to the amount of money listed in the purchase order for the services identified in this contract.

Funding: Notwithstanding any other provision of this Agreement requiring the liability of the State for the expenditure of money, whether by direct payment, electronic wire transfer, or covenant, if sufficient funds are not appropriated or special funds authorized by the Delaware General Assembly or other appropriate Federal or State agency to sustain, in whole or in part, the State's performance under this Agreement, or if such appropriation is reduced such that its amount is insufficient to sustain such performance, this Agreement

shall be terminated and rendered null and void at the insistence of the authorized representative of the State.

The State further represents and warrants that it has adequate funds to meet its obligations hereunder during the State's current fiscal year which ends June 30, 2011.

15. Governing Law

The Laws of Delaware shall govern this contract. The Financial Advisor agrees that any litigation relating to this contract shall be filed and litigated in a court in the State of Delaware.

This Contract will be binding on both parties upon execution by authorized representatives for both parties and receipt by the Financial Advisor of an approved State of Delaware purchase order.

16. Severability

If any portion of this contract is held to be void, invalid, or otherwise unenforceable, in whole or part, the remaining portions of this contract shall remain in effect.

FINANCIAL ADVISORY SERVICES

IN WITNESS WHEREOF, the Department of Finance, the Department of Transportation and the Financial Advisors have executed this agreement on _____.

BY: _____
Thomas J. Cook
DEPARTMENT OF FINANCE

WITNESS: _____
Stephanie M. Scola
Director of Bond Finance
DEPARTMENT OF FINANCE

FINANCIAL ADVISORY SERVICES

IN WITNESS WHEREOF, the Department of Finance, the Department of Transportation and the Financial Advisors have executed this agreement on _____.

BY: _____
Carolann Wicks
DEPARTMENT OF TRANSPORTATION

WITNESS: _____
Brian Motyl, Administrator
Transportation Trust Fund
DEPARTMENT OF TRANSPORTATION

FINANCIAL ADVISORY SERVICES

Robert A. Rich, Managing Director
Public Financial Management, Inc.

STATE OF: _____

COUNTY OF: _____

BE IT KNOWN THIS _____ DAY OF _____, 2011, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Robert A. Rich, the Managing Director of the Financial Services Advisor made a party to this Agreement and who, after being duly sworn by me according to law, did affirm that he is authorized to sign this Agreement on behalf of the Financial Advisor made a party to this Agreement and that he has done so voluntarily and with full knowledge of the terms and conditions of said Agreement.,

Sworn to and subscribed BEFORE ME THE DAY AND YEAR AFORESAID.

Notary Public

My Commission expires _____.

Appendix 1 – Rates for Services Public Financial Management

1. \$60,000 per year for general financial advisory services not related to bond issues. These services could include any discreet financial review or analysis that the State requests. This fee will be billed in equal quarterly installments to the attention of the contact person described in this contract.
2. \$35,000 per transaction for financial advisory services rendered to the State in the execution of sales of traditional general obligation bond issues. Services rendered shall include bond sizing, debt service analysis, review of bond and disclosure documents, assistance with rating agencies, closing activities and other traditional duties.
3. \$40,000 for services rendered in the execution of sales of revenue bonds for the Department of Transportation, including all financial analyses pertaining to sale, pre-pricing, electronic sale, re-offerings, and post-sale assistance in document preparation.
4. \$40,000 per transaction for refunding or defeasance of existing bonds for Delaware general obligation bonds, including savings analysis, issuance coordination with potential underwriters (if not competitive sale), electronic sale, post-sale preparations.
5. \$45,000 per transaction for refunding or defeasance of existing bonds for Department of Transportation revenue bonds, including savings analysis, issuance coordination with potential underwriters (if not competitive sale), electronic sale, post-sale preparations.
6. Non-transaction services required will be billed on an hourly basis as needed at the following rates:
 - Managing Director - \$350
 - Senior Managing Consultant - \$300
 - Consultant - \$250
 - Associate - \$100
7. The above-quoted fees include all computer and quantitative analysis required in connection with financing of each entity.
8. The fees referenced above apply whether or not the State issues bonds and notwithstanding the number or amounts of bond issues of each issuer annually.

9. Reimbursement for direct out-of-pocket expenses of the Financial Advisor including, but not limited to, expenses of travel (assuming reasonable travel origination points), communications, advertising, information meetings, printing of offering material, bonds, artwork, photography, and expenses incurred in connection with the distribution of any offering material, all of which will be documented by the Financial Advisor.

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Appendix 2 – Scope of Services Public Financial Management

The Scope of Services shall include, but not be limited to, the following:

1. Examine, evaluate and formulate economically sound and flexible financing programs that take into consideration the Issuer's objectives, existing debt structures, timing of capital projects, tax regulations, and the current financial climate in the capital markets.
2. Assist in the preparation of special studies, including review of debt capacity and the formulation of related debt policies.
3. Review new program ideas and financing techniques and generate or assist in the development of new program/financing initiatives. Conduct independent and objective reviews and evaluations of economic feasibility and cost-effectiveness of programs, project finance transactions or other initiatives proposed to the State by third parties including governmental entities, non-profit sponsors, for-profit developers, investment banking firms, and others.
4. In the event bonds are to be sold pursuant to a negotiated sale, assist in the development of a Request for Proposals, review the qualifications of financial institutions interested in acting as managing underwriters, and participate in the selection process.
5. Provide technical assistance as needed in the management of the State's existing portfolios to maximize cash flow and monitor bond-related investments, including review of pricing and timing.
6. Advise the State on the best practices for ensuring a favorable credit rating and provide preparatory information for rating agency visits. Prepare reports for, and participate in, presentations to the rating agencies, credit enhancement providers and bond insurers. In addition, participate in the rating agency visits.
7. Assist the State in making submissions and presentations relating to the State's past, current and proposed financing activities to governmental entities, including the State Legislature, as well as to private entities, such as financial institutions.
8. Formulate, coordinate and participate in information meetings with institutional investors, credit analysts, underwriters and other public presentations as requested by the State, including hearings with the State Legislature and other government bodies as required.
9. Upon request of the State, perform periodic arbitrage rebate analyses as may be required by the IRS Code and trust indentures relating to Authority bond

transactions. These services will be provided on an as-needed, fee paid basis, exclusive of the contract price.

10. Provide advice as required on the investment guidelines pertaining to the State's portfolios.
11. Provide continuing information and advice on a timely basis to the State concerning the municipal debt markets, changes in applicable tax laws, on improving its financial status in the marketplace and on avoiding any actions that may have a negative impact on the Issuer's status in the marketplace.
12. Provide financial analyses and expert advice to the State in all the areas of financing relative to timing, method of sale (competitive versus negotiated), strategies, economic considerations, market conditions, maturity structures, interest rates, redemption provisions, debt service requirements, evaluating bond pricing and fees for services (underwriter, trustee, bond counsel, etc.), evaluation of syndicate members, monitoring bond allocations, settlement and post-settlement analyses, etc.
13. Advise and assist the State in preparing requests for proposals from, and in selecting services providers (underwriters, bond counsels, tax counsel, financial printers, cash flow verifiers, etc.) required to assist in effecting the issuance of State notes or bonds. Undertake bidding process, assist bond counsel with printing and distribution of any Official Statement, any Notice of Sale or other financing document. Prepare or assist in the preparation of all documents relative to a financing, including review of all legal documents.
14. Advise and represent the State in negotiating bond interest rates, transactions fees and expenses, and other provisions of bond purchase agreements or remarketing agreements governing the negotiated sale of notes or bonds to underwriters or the private placement of notes or bonds to institutional investors.
15. Advise and assist the State on matters relating to reinvestment of bond proceeds, including services as investment agreement broker to prepare and distribute bid specifications/documents and to conduct required competitive bidding among prospective investment agreement providers. These services will be provided on an as-needed basis, exclusive of the contract price.
16. Assist in any review of management issues as requested.
17. Attending working group meetings as required.
18. Perform such other duties that are reasonably required.

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