

1. Requested Motion:

Meeting Date: 11/15/2010

Retain RBC Capital Markets, St. Petersburg, FL. to act as the Town's Financial Advisor regarding potable water line replacement financing and any other capital improvement financing as outlined in Exhibit A.

Why the action is necessary:

Bond Counsel and the Town Attorney have recommended the employment of a financial advisory to assist the Town in bond validation proceedings and financing of the cost of potable waterline replacement.

What the action accomplishes:

Employs RBC Capital Markets to act as the Town's Financial Advisor as it relates to any and all obligations that may be authorized and/or issued or otherwise created or assumed during the period in which the agreement is effective.

2. Agenda:

- Consent
- Administrative

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other

4. Submitter of Information:

- Council
- Town Staff
- Town Attorney

5. Background:

Certain potable waterlines in the Town need to be replaced and the Town will have to finance the cost of same. In order to structure the financing in a manner that is most advantageous for the Town, the services of a financial advisor, with experience in financing for public entities, is required. The advisor can also assist the Town in the bond validation proceedings that are required.

6. Alternative Action:

Not retain the services of a financial advisor.

7. Management Recommendations:

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

- Approved
- Denied
- Deferred
- Other



RBC Capital Markets®

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St. Petersburg, FL 33701
(727) 895-8871
(727) 895-8895

October 27, 2010

Mr. Terrance Stewart, Town Manager
Town of Fort Myers Beach
2523 Estero Blvd.
Fort Myers Beach, FL 33931

Dear Mr. Stewart:

1. **Retention of RBC Capital Markets, LLC.** We understand that the Town of Fort Myers Beach (“Issuer” or “you”) will have under consideration the issuance of obligations evidencing indebtedness (“Obligations”), either in a single financing or in a series of financings, and that in connection with the issuance of such Obligations you hereby agree to retain RBC Capital Markets, LLC (“RBC CM”) as your financial advisor in accordance with the terms of this financial advisory agreement (“Agreement”). This Agreement shall apply to all Obligations that may be authorized and/or issued or otherwise created or assumed during the period in which this Agreement is effective.
2. **Scope of Services.** As financial advisor, we agree to perform the following services:
 - (a) Analyze the financing alternatives available to the Issuer, taking into account its borrowing capacity, future financing needs, policy considerations, and such other factors as we deem appropriate to consider.
 - (b) Recommend a plan for the issuance of Obligations that will include: (1) the type of bonds (current interest, capital appreciation, deferred income, etc.); (2) the date of issue; (3) principal amount; (4) interest structure (fixed or variable); (5) interest payment dates; (6) a schedule of maturities; (7) early redemption options; (8) security provisions; (9) appropriate management fee and takedown; and (10) other matters that we consider appropriate to best serve the Issuer’s interests.
 - (c) Advise you of current conditions in the relevant debt market, upcoming bond issues, and other general information and economic data which might reasonably be expected to influence interest rates, bidding conditions or timing of issuance.
 - (d) Organize and coordinate the financing team. Upon request, we will assist the Issuer in selecting the paying agent, escrow agent and verification agent, as the particular transaction may require, each of whom will be retained and compensated by you. We will solicit and evaluate underwriter proposals upon request and make a recommendation for the hiring of the underwriter(s).
 - (e) Work with counsel on the transaction, including bond counsel whom you retain, who will be recognized municipal bond attorneys, whose fees will be paid by you, and who will prepare the proceedings, provide legal advice concerning the steps necessary to be taken to issue the Obligations, and issue an unqualified opinion (in a form standard for the particular type of financing) approving the legality of the Obligations and (as applicable) tax exemption of the interest paid thereon. In addition, bond counsel will issue an opinion to the effect that the disclosure document does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements

contained therein, in light of the circumstances under which they were made, not misleading. Generally, working with counsel will mean coordinating with the attorneys and assisting in the financial advisory aspects of preparing appropriate legal proceedings and documents.

- (f) Assist in the Issuer's preparation of the Preliminary Official Statement ("POS") and the Official Statement ("OS") or equivalent document as the particular transaction may require (such as a private placement memorandum), if any.
- (g) Make recommendations as to the need for credit rating(s) for the proposed Obligations and, should the Issuer seek a rating, coordinate the process of working with the rating agency or agencies and assist in the preparation of presentations as necessary.
- (h) Make recommendations as to obtaining credit enhancement for the Obligations and, should the issuer seek any such credit enhancement, coordinate the process and assist in the preparation of presentations as necessary.
- (i) Attend meetings of governing bodies of the Issuer, its staff, representatives or committees as requested.
- (j) After closing, we will deliver to the Issuer and the paying agent(s) definitive debt records, including a schedule of annual debt service requirements on the Obligations.

You acknowledge that advice and recommendations involve professional judgment on our part and that the results cannot be, and are not, guaranteed.

3. **Information to be Provided to RBC CM.** You agree (upon our request) to provide or cause to be provided to us information relating to the Issuer, the security for the Obligations, and other matters that we consider appropriate to enable us to perform our duties under this Agreement. With respect to all information provided by you or on your behalf to us under this Agreement, you agree upon our request to obtain certifications (in a form reasonably satisfactory to us) from appropriate Issuer representatives as to the accuracy of the information and to use your best efforts to obtain certifications (in a form reasonably satisfactory to us) from representatives of parties other than the Issuer. You acknowledge that we are entitled to rely on the accuracy and completeness of all information provided by you or on your behalf.
4. **Official Statement.** You acknowledge that you are responsible for the contents of the POS and OS and will take all reasonable steps to ensure that the governing body of the Issuer has reviewed and approved the content of the POS and OS. You acknowledge that you are subject to and may be held liable under federal or state securities laws for misleading or incomplete disclosure. To the extent permissible by law, you agree to indemnify and hold us harmless against any losses, claims, damages or liabilities to which we may become subject under federal or state law or regulation insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon omission or alleged omission to state in the disclosure document a material fact required to be stated therein or necessary to make the statements therein not misleading; other than any claims that arise from the willful misconduct or gross negligence of RBC CM and its officers, employees or agents; and will reimburse us for any legal or other expenses reasonably incurred by us in connection with investigating or defending any such loss, claim, damage, liability or action.

5. **Fees and Expenses.** In connection with the authorization, issuance, and sale of Obligations, RBC CM shall be paid at closing in accordance with the following schedule, with a minimum fee of \$15,000 per transaction:

Par Amount of Debt Issued	Fee Per \$1,000
First \$10,000,000	\$1.50
\$10,000,000 - \$25,000,000	\$1.25
\$25,000,000 - \$40,000,000	\$1.00
\$40,000,000 - \$100,000,000	\$0.75
\$100,000,000 and more	\$0.50

Our fee will become due and payable simultaneously with the delivery of the Obligations to the Purchaser. Our fee does not include and we will be entitled to reimbursement from you for any actual "out-of-pocket" expenses incurred in connection with the provision of our services, including reasonable travel expenses or any other expenses incurred on your behalf. These expenses will be due and payable when presented to the Issuer, which normally will be simultaneously with the delivery of the Obligations to the Purchaser and are subject to the Issuer's approval.

6. **Term of Agreement and Waiver of Sovereign Immunity.** This Agreement shall be for a period of 12 months (the "Term") from its date; however, this Agreement may be terminated by either party upon 30 days written notice. If neither party provides written termination prior to the end of the Term, this Agreement will automatically renew for another Term. You agree and understand that this Agreement is a contract for services and waive any claims you may have that you are immune from suit by virtue of any law, statute, or claim for any matter arising from or relating to this Agreement. Paragraphs 5 (insofar as it concerns reimbursable expenses) and 6 (insofar as it concerns waiver of sovereign immunity) will survive any termination of this Agreement.
7. **Nondiscrimination.** During the term of this Agreement, RBC CM shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and agrees to abide by all Federal and State laws regarding nondiscrimination.
8. **Ownership and Access to Records and Audits.** All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from RBC CM providing services to the Issuer under the Agreement shall be the property of the Issuer. The Issuer shall, during the term of this Agreement and for a period of three (3) years from the date of the termination of this Agreement, have access to and the right to examine and audit any Records of RBC CM involving transactions related to this Agreement.
9. **Independent Contractor.** RBC CM and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the Issuer with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
10. **Compliance with Laws.** RBC CM shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities relating to services provided hereunder.
11. **Prohibition of Contingency Fees.** RBC CM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for RBC CM, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for RBC CM, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

12. **Miscellaneous Provisions.** This Agreement is submitted in duplicate originals. Your acceptance of this Agreement will occur upon the return of one original executed by an authorized Issuer representative, and you hereby represent that the signatory below is so authorized. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of the Agreement, which shall remain in full force and effect. This Agreement constitutes the entire agreement between the parties as to the subject matter thereof and supersedes any prior understandings or representations. This Agreement may be amended or modified only by a writing signed by both parties. This Agreement is solely for the benefit of you and RBC CM, and no other person. RBC CM may not assign this Agreement without your prior written consent.

Respectfully submitted,

RBC CAPITAL MARKETS CORPORATION

By: _____

Name: Julie A. Santamaria

Title: Director

Date: October __, 2010

ACCEPTANCE

ACCEPTED by the Town of Fort Myers Beach on _____, 2010

By _____

Name _____

Title _____