



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

July 6, 2021

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

From: Karen A. Prendergast, Chief Financial Officer

Subject: Bond Counsel for WIFIA Loan

The Environmental Protection Agency has accepted the Authority's application for low interest financing through their WIFIA program. I expect that process to take between 3 and 5 months, with a closing in the last quarter of 2021.

The Authority must issue a private placement bond to the EPA to secure the loan. At this time, I believe we would need the following bond counsel services:

- Review the Authority's Fourth General Water Revenue Bond Resolution and prepare a supplemental resolution authorizing the issuance of Series 2021 Bonds.
- Prepare an opinion on the Supplemental Resolution for the Authority's Bond Trustee
- Review of the Project Finance Agreement and provide an opinion relative to same
- Participate in meetings where bond counsel is needed.
- At the request of the Chief Financial Officer, prepare or review and advise or opine on any related correspondence or documents.

In June of 2019 the Authority prepared and sent a Request for Information for various legal services. Four firms indicated that they would be interested in providing bond counsel. I sent an informal request for information, to the firms who responded in 2019. Two of the firms agreed to provide bond counsel for the WIFIA loan process – Phillips Lytle and Harris Beach.

Neither firm has worked with the EPA on a WIFIA loan, however, both firms have experience with closing EFC loans, which are similar. Harris Beach is more active and has more recent experience with this type of transaction and the assigned counsel is based in Buffalo. I am recommending we retain their services for this project.

I am including an engagement letter from Harris Beach for consideration at the July 8th board meeting.

The application and related issuance costs associated with the WIFIA loan process will be funded by budgeted Corporate and Fiscal Expenses in unit 4015 – Cash Management.

<u>Account</u>	<u>2021 Budget</u>
401000 920851 Corp & Fiscal Exp	\$290,000

Bond Counsel fees of \$35,000 will be paid from this budget line.

cc T. McCracken
 M. Carney
 R. Stoll

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** 202000259
Project Description: WIFIA Loan – Bond Counsel

Item Description:

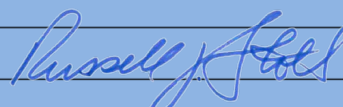
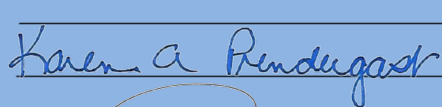

- | | | | |
|---|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input checked="" type="checkbox"/> Other Engagement Letter | | | |

Action Requested:

- | | |
|---|--|
| <input type="checkbox"/> Board Authorization to Execute | <input type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input checked="" type="checkbox"/> Other Execution of Engagement Letter | |

Approvals Needed:

APPROVED AS TO CONTENT:

- | | | |
|---|--|------------------|
| <input type="checkbox"/> Other (if Applicable) | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Operating Officer |  | Date: 7/6/2021 |
| <input type="checkbox"/> Executive Engineer | _____ | Date: _____ |
| <input type="checkbox"/> Director of Administration | _____ | Date: _____ |
| <input type="checkbox"/> Risk Manager | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Financial Officer |  | Date: 07/06/2021 |
| <input checked="" type="checkbox"/> Legal |  | Date: 7/6/2021 |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|---|----------------|
| <input checked="" type="checkbox"/> Secretary to the Authority |  | Date: 07/06/21 |
|--|---|----------------|

Remarks: _____

Resolution Date: _____ **Item No:** _____

HARRIS BEACH PLLC
ATTORNEYS AT LAW

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716.200.5050

TODD MILES
MEMBER
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TMILES@HARRISBEACH.COM

June 25, 2021

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Karen A. Prendergast
Chief Financial Officer
Erie County Water Authority
295 Main Street, Room 350
Buffalo, NY 14203

RE: Request for Information re: Bond Counsel Services

Dear Ms. Prendergast:

In response to your Request for Information and supplementing our formal proposal submitted June 4, 2019, Harris Beach is pleased to submit this proposal to provide bond counsel services to the Erie County Water Authority (the "Authority") in connection with the financing of certain improvements to the Authority's facilities (the "Project" or the "Matter") through the Water Infrastructure Finance and Innovation Act ("WIFIA") program administered by the Environmental Protection Agency ("EPA"). It is our understanding that the total estimated cost of the Project is approximately \$46,700,000 of which up to \$24,000,000 may be financed through bonds issued by the Authority on a parity basis with the Authority's outstanding bonds and structured in accordance with a WIFIA Project Finance Agreement.

This letter sets forth the terms of engagement under which Harris Beach PLLC proposes to serve as bond counsel to the Authority for the proposed WIFIA transaction, including a summary of the scope of services we would provide as Bond Counsel, the fee schedules for these services and terms of payment.

Experience

Harris Beach PLLC is a nationally recognized bond "red book" listed bond counsel firm. We serve as bond counsel to state and local agencies, municipalities and school districts throughout New York State. Our Public Finance Department has extensive experience with all types of revenue and general obligation bond financings, including in particular short term and long term financings through the New York State Environmental Facilities Corporation ("EFC"). A representative list of recent EFC transactions is as follows:

Village of Tupper Lake \$7,812,683 EFC Clean Water Facility Note – 2021 closed on 6/10/21

Village of Bath \$2,686,288 EFC Clean Water Statutory Installment Bond – 2020 closed on 8/13/20
County of Suffolk \$189,101,217 EFC Clean Water Facility Note – 2020 closed on 8/6/20
Village of Naples \$9,350,000 EFC Clean Water Facility Note – 2020 closed on 6/4/20
Village of Tupper Lake \$7,289,401 EFC Drinking Water Facility Note – 2020 closed on 5/7/20
City of North Tonawanda \$4,533,137 EFC Clean Water Facility Note – 2020 closed on 3/19/20
Village of Montour Falls \$7,534,853 EFC Clean Water Facility Note – 2019 closed on 12/12/19
Village of Watkins Glen \$18,437,695 EFC Clean Water Facility Note – 2019 closed on 12/12/19
Village of Saranac Lake \$4,365,939 EFC Clean Water Facility Note – 2019 closed on 8/15/19
Village of Saranac Lake \$1,271,258 EFC Clean Water Facility Note – 2019 closed on 6/20/19
Village of Saranac Lake \$1,918,242 EFC Clean Water Statutory Installment Bond – 2019 closed on 6/20/19
Village of Greene \$5,570,140 EFC Clean Water Statutory Installment Bond – 2019 closed on 6/6/19
Village of Nunda \$2,327,332 EFC Clean Water Facility Note, 2019 closed on 3/14/19

While we have no specific experience with the WIFIA program, our review of the WIFIA loan process through the website you referenced indicates that there are substantial similarities between the WIFIA loan process and the EFC loan process, each of which is intended to provide subsidized loans to local government borrowers secured by revenue or general obligation bonds issued by such borrowers utilizing documentation and legal proceedings similar to sales of such bonds to traditional capital market investors.

Services

Resolutions and Associated Proceedings. As bond counsel to the Authority, we would act as a recognized independent counsel with respect to the authorization of the obligations being issued, and undertake all legal services associated with that responsibility. In particular, we would review the Authority's Fourth General Water Revenue Bond Resolution and prepare a supplemental resolution authorizing the issuance of Series 2021 Bonds to the EPA together with ancillary documents, review and assist in the negotiation of the Project Finance Agreement between the Authority and EPA, participate in calls and meetings as needed, and render opinions related to the bond authorization documents to transaction parties as required to execute the transaction. In connection therewith, we would review and if necessary, comment on the proceedings undertaken by the Authority under the State Environmental Quality Review Act ("SEQRA"). We would also work closely with the Authority and its fiscal advisors in structuring the financing, provide counsel regarding finance questions raised in connection with the Project and advise the Authority as to alternatives available under any particular scenario. We enjoy an excellent working relationship with Capital Markets Advisors and work on financing transactions by numerous mutual local government clients throughout the state.

Should you request our assistance with respect to another matter, the scope of that engagement, the services we will provide, and any other relevant information will be the subject of a separate written acknowledgment (which may be communicated by email) by the Firm and the Authority that relates specifically to such other matter, but which may incorporate the other terms of this letter of engagement by reference.

Except as we may otherwise both agree in writing, you agree that we may disclose the fact of our representation of you, including in materials that the Firm uses to describe its practices and expertise.

Firm Personnel; Principal Contact

Todd Miles will be responsible for the supervision of the Matter, but the Authority is engaging the Firm as a whole and not any individual attorney. He can be reached at (917) 991-8442; tmiles@harrisbeach.com. As necessary or appropriate, the Firm will draw upon the talents and experience of other Firm attorneys, professionals, and staff in providing services relating to the Matter.

Fees and Charges

We propose to charge the Authority a flat fee of \$35,000 for our bond counsel services on the WIFIA financing transaction.

Disbursements. Disbursements for direct out-of-pocket costs, such as photocopying and facsimile charges, postage and courier charges, and travel costs, if any, would be billed to the Authority in addition to the fees for services rendered. We expect the disbursements for the WIFIA financing would not exceed \$250 and we agree not to charge the Authority for disbursements in excess of this amount.

In the event a dispute arises between the Authority and the Firm regarding fees, the Authority may have the right to arbitrate that dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to the Authority upon request.

Should the Authority ever issue a litigation hold to the Firm for a matter unrelated to the Firm (e.g., due to a subpoena or litigation/threatened litigation in which the Firm is not a party or potential party), the Authority shall reimburse the Firm for its reasonable costs expended in complying with such litigation hold.

If the Authority ever overpays an invoice, the Authority agrees that the Firm may apply such overpayment to any outstanding fees and expenses or to the Authority's next bill, with notice to the Authority as to how the Firm applied the overpayment. If there are no outstanding fees or expenses and no work in progress, the Firm shall refund the overpayment to the Authority.

The above fee quotes are based upon our understanding of the scope of services to be provided on the WIFIA financing transaction. In the event that there is a change in circumstances which warrants significantly greater Bond Counsel services than which are normally required in connection with the types of transactions outlined above, we would contact you to arrange for an appropriate adjustment in our Bond Counsel fee, in an amount to be agreed upon with the Authority at that time.

Billing and Collection Information

For services performed in connection with the issuance of bonds or notes, or other financings, our fees are normally billed after the closing of each transaction. We customarily do not submit an invoice for services until that time, unless there is a substantial delay in completing the financing or the financing is not completed. For services not associated with a specific financing transaction, we would bill the Authority upon completion of such specific services, or for ongoing matters, on a monthly or other periodic basis, as agreed to with the Authority.

Client Cooperation

By engaging us to serve as Bond Counsel, the Authority agrees to cooperate fully with us and to provide promptly all information known or available to you relevant to our representation. The Authority also agrees to pay in a timely manner our statements for services and expenses as provided above.

Conclusion of Representation; Disposition of Client Documents

Unless previously terminated, our representation with respect to the Matter will terminate upon the Firm sending to the Authority a final statement for services rendered in connection with the Matter. Following such termination, any otherwise nonpublic information you have supplied to us that is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, the Firm will return the Authority's papers and property promptly after receipt of payment for any outstanding fees and costs. If you do not make such a request within ninety (90) days following such termination, you agree and understand that any materials left with the Firm after the engagement ends may be retained or destroyed at our discretion. You should understand that "materials" include paper files, as well as information in other storage media, including voicemail, email, printer files, copier files, video files, and other formats. The Firm reserves the right to make, at our expense, copies of all documents generated or received by us in the course of our representation. The Firm's files pertaining to the Matter will be retained by the Firm. These Firm files include, for example, Firm administrative records; internal lawyers' work product, such as drafts, notes, and internal memoranda; and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. We will retain all remaining documents for a certain period of time, but reserve the right for various reasons, including the minimization of unnecessary storage expenses, to destroy or otherwise dispose of them within a reasonable time after the termination of the engagement.

Termination of Engagement

Either the Authority or Harris Beach may terminate our engagement as Bond Counsel (the "Engagement") at any time for any reason by written notice, subject, on our part, to the rules of professional responsibility. No such termination, however, would relieve the Authority of the obligation to pay the legal fees owed to Harris Beach for services performed and other charges owed to us through the date of termination. After the completion of our services on the Authority's behalf, changes may occur in applicable laws or regulations that could have an impact upon the Authority's future rights and liabilities. Unless the Authority engages Harris Beach after completion of the Engagement to provide additional advice on issues arising from the Engagement or related matters, Harris Beach would have no continuing obligation to advise the Authority with respect to future legal developments.

Communication with the Authority

Unless the Authority directs otherwise, the Firm will use unencrypted e-mail as the primary means of communication with the Authority, and the Authority shall inform the Firm of which e-mail address(es) the Firm should use for such communication. The Firm may also use cellular telephones (including smart phones) and facsimile machines to communicate with the Authority. Texting is not a preferred method of communication, but may be used on a limited basis to communicate non-sensitive information to the Authority. The Firm will take reasonable steps to protect the confidentiality of Firm-Client communications, but, unless applicable law provides otherwise, the Firm will not be responsible for disclosures of the Authority's confidential information occurring from the use of such communication technologies. The Authority agrees to notify the Firm if Client has any requests or requirements regarding the Firm's methods of communication with Client that differ from the foregoing.

Possible Conflicts

Conflicts of interest will be handled as required by applicable rules of professional conduct. Unless otherwise agreed, for the purpose of determining whether a conflict of interest exists, it is only the Authority that the Firm represents, and not any of its Affiliates. The Authority agrees not to give the Firm any confidential information regarding any Affiliate unless: (a) that Affiliate has separately engaged the Firm to perform services on that Affiliate's behalf; or (b) such information is essential to the engagement set forth herein. While the Firm recognizes that to act adversely to any Affiliate could jeopardize a long-term relationship with the Authority, which the Firm does not wish to do, for conflict of interest purposes the Firm reserves the right to represent another client with interests adverse to any Affiliate that is not itself a Firm client without obtaining any consent from the Authority or the Authority's Affiliates.

The Firm maintains a Risk Management Committee that acts as in-house counsel to its attorneys and will, on occasion, retain outside counsel when an attorney handling a client matter may have a concern on a matter of professional responsibility. To the extent the Firm is addressing its duties, obligations, or responsibilities to the Authority in those consultations, it is possible that a conflict of interest might be deemed to exist as between Firm lawyers or the Firm

and the Authority. The Authority agrees that these consultations are protected from disclosure by the Firm's attorney-client privilege and that the Authority will not seek to discover or inquire into them. Of course, nothing in the foregoing shall diminish or otherwise affect the Firm's obligation to keep Client informed of material developments in the Firm's representation of the Authority, including any conclusions arising out of such consultations to the extent that they affect the Authority's interests.

Please contact either Bob Murray or me directly with any questions regarding this engagement letter. Otherwise, if this proposal is acceptable, please so indicate by returning a countersigned copy of this engagement. Consistent with its policy, the Firm reserves the right to delay commencement of work on this Matter until the Authority has signed and returned this engagement letter to us.

Very truly yours,



Todd Miles

TM:mrt
Enclosure
Cc via email w/ encl: Robert Murray

Agreed to and accepted this _____ day of July, 2021

ERIE COUNTY WATER AUTHORITY

By: _____
Name: _____
Title: _____