

SUPERINTENDENT
Efren Yturralde

DEPUTY SUPERINTENDENT/
CHIEF FINANCIAL OFFICER
Steven W. Suggs




4950 MCNUTT,
SUNLAND PARK, NM

P. O. DRAWER 70
ANTHONY, NM 88021
PHONE (575) 882-6243
FAX (575) 882-6265

MEMORANDUM

TO: GISD Board of Education

FROM: Steven W. Suggs, CFO
Central Purchasing Agent 

DATE: September 4, 2012

RE: Recommendation for Financial Advisory Services

The District issued RFP 12-13-04 Financial Advisor Services on July 23, 2012 with a deadline for responses on August 2, 2012. One timely response was received on August 2, 2012.

In evaluating the status of the District's current General Obligation Bond and Ed. Tech Notes Financing Plan, it is recommended that the RFP be cancelled and an alternative procurement method be used under NMSA 13-1-129. The use of the alternative procurement will allow the District to continue with the current financial advisor at least through the final sale of bonds under the current authorized bond issue. The final sale is planned for the Fall of 2013. A new RFP would be issued in the Fall of 2013 to coincide with the February 2014 Bond Election.

New Mexico State University (NMSU) solicited proposals for Financial Advisory Services which are substantially the same as the District's needs. NMSU awarded a contract to RBC Capital Markets, LLC effective September 1, 2012 through August 30, 2016.

Pursuant to NMSA 13-1-129 the District proposes to issue a Purchase Order (PO) to RBC Capital Markets, LLC using the NMSU contract and price agreement. The District Purchase Order will reference the NMSU Contract on the PO and a copy of the contract and related documents will be retained in the procurement file.

This recommendation is presented to the GISD Board of Education for approval to issue a Purchase Order to RBC Capital, LLC with the terms as specified in the NMSU Contract #201202054. A copy of the NMSU Contract is attached to this memo.

NEW MEXICO STATE UNIVERSITY
PROFESSIONAL SERVICE CONTRACT



CONTRACT/PURCHASE ORDER NUMBER: 201202054

THIS AGREEMENT, made and entered into this 6th day of August, 2012 by and between the Regents of New Mexico State University, hereinafter called the "University", and

RBC Capital Markets
(Company/Individual Name)
6301 Uptown Blvd. NE Suite 110
(Address)
Albuquerque, NM 87110

hereinafter called the "Contractor".
WITNESSETH:

WHEREAS, the Director of Purchasing & Risk Management Administration of the University is advised and believes that the Contractor is one of such requisite character and qualifications and is willing to engage him/her for professional services, in accordance with the terms and conditions hereinafter set out, and the Contractor understanding and consenting to the foregoing is willing to render such professional services as outlined in paragraph one.

NOW THEREFORE, in consideration of the premises and of the mutual and reciprocal promises of the parties hereto, IS HEREBY covenanted and agreed by and between parties:

1. That the Contractor will render the following professional services to the University: _____
(Note: Attach Proposal if Contract is \$5,000 or more)

Scope of Services per Request for Proposal 201202054-RA - Financial Advisor, RBC proposal dated
6/21/12 prepared by Kevin Powers and Best and Final Financial Offer dated 7/31/12

2. That the contractor will devote the necessary hours each week to the performance of such duties that may be assigned to him/her by the University.
3. That the contractor will serve the University diligently and faithfully, and according to its ability and in all respects, will use his/her utmost endeavors to promote the interest of the university.
4. That the Contractor will maintain records indicating the date and length of time such services are rendered. These records shall be subject to inspection by the designated agent of the University.
5. That the services rendered by the Contractor shall be at the location of _____
_____ or where the University shall designate.

NEW MEXICO STATE UNIVERSITY
PROFESSIONAL SERVICE CONTRACT



CONTRACT/PURCHASE ORDER NUMBER 201202054

6. That for the services rendered satisfactory as per paragraphs one through five, the University agrees to pay the Contractor compensation as follows: at the following rate of \$ _____
As per Fee Schedule dated 7/31/12 (Addendum I) plus expenses (if applicable) as follows:

Such compensation and expenses not to exceed \$ TBD in total, payable by the University upon receipt of a signed invoice or Payee Claim for Reimbursement. The Contractor will pay the State of New Mexico the Gross Receipts Tax levied on the amounts payable under this contract.

7. That the Contractor is an independent contractor performing professional services for the University. The Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the University as a result of this contract.
8. That the terms of this contract are contingent on sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this contract. The University's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
9. That the Contractor shall not assign any interest in this contract or transfer any interest in same or assign any claim for money due or to become due under this contract without the prior written consent of the University.
10. That either party, independent or in concert, may terminate this contract by giving thirty (30) days written notice to the other party.
11. That this agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings, have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.
12. That this agreement shall not be altered, changed, or amended except by the instrument in writing executed by the parties hereto. The foregoing being clearly understood and agreed to, the parties hereto have set their hands and seals.
13. That this agreement shall be deemed to be a contract made in accordance with the laws of the State of New Mexico.
14. As between the parties, each party will be solely responsible for liability arising from personal injury, including death, or damage to property arising from the act or failure to act of the respective party or of its officials, agents and employees pursuant to this Agreement. The liability of the Regents of New Mexico State University shall be subject to the Immunities and limitations of the Tort Claims Act, Sections 41-1-1 et. Seq., NMSU 1978, and of any amendments thereto.

NEW MEXICO STATE UNIVERSITY
PROFESSIONAL SERVICE CONTRACT



SIGNATURE PAGE

CONTRACT/PURCHASE ORDER NUMBER 201202054

CONTRACTOR INFORMATION

| | |
|---|---|
| <u>RBC Capital Markets, LLC</u> NAME - TYPE/PRINT | <u>6301 Uptown Blvd. NE, Suite 100</u> MAILING ADDRESS |
| <u>(505) 872-6899</u> PHONE NUMBER | <u>Albuquerque NM 87110</u> CITY STATE ZIP |
| <u>kevin.f.powers@rbccm.com or paul.cassidy@rbccm.com</u> E-MAIL ADDRESS | |

DEPARTMENT INFORMATION

| | | |
|--|--------------------------------------|---------------------------------|
| <u>Cost Accounting & Reporting MSC CAR</u> DEPARTMENT NAME MAIL STOP CODE (MSC) | <u>Jean Carsey</u> CONTACT PERSON | <u>646-7909</u> PHONE NUMBER |
|--|--------------------------------------|---------------------------------|

DATE EFFECTIVE: 09/01/12

TERMINATION EFFECTIVE: 08/30/16

TOTAL AMOUNT THIS CONTRACT SHALL NOT EXCEED: \$ TBD

THIS CONTRACT BETWEEN UNIVERSITY AND RBC Capital Markets, LLC

HAS BEEN APPROVED BY:


SIGNATURE OF CONTRACTOR


SIGNATURE OF DIRECTOR OF PURCHASING & RISK MANAGEMENT ADMINISTRATION
AUG 20 2012


SIGNATURE OF DEPARTMENT HEAD
Lorin Gobble


SIGNATURE OF SENIOR VICE PRESIDENT FOR ADMINISTRATION AND FINANCE
8/20/12

ADDENDUM

I



RBC Capital Markets®

RBC Capital Markets, LLC
6301 Uptown Blvd. NE, Suite 110
Albuquerque, New Mexico 87110
(505) 872-5999
(505) 872-5979 - Fax

AUGUST 7, 2012

Ms. Angela Throneberry
Senior VP Administration & Finance
New Mexico State University
MSC 3AA
P.O. Box 30001
Las Cruces, New Mexico 88003-8001

Ladies and Gentlemen:

1. **Retention of RBC Capital Markets, LLC.** We understand that the New Mexico State University ("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 municipal advisor in accordance with the terms of this municipal 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. The Issuer agrees that the municipal advisory duties of RBC CM shall apply only to matters pertaining to the issuance of such Obligations and that RBC CM is not acting as your municipal advisor with respect to any other matters absent an explicit written municipal advisory agreement.
2. **Scope of Services.** As municipal 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. To the extent appropriate, the plan will address strategies in addition to the issuance of obligations, such as interest rate derivative transactions.
 - (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 selected by you. We will recommend qualified paying agents, escrow agents and verification agents, as the particular transaction may require, each of whom will be retained and compensated by you. In a negotiated offering, we will assist in the preparation of underwriter proposals upon request and provide assistance to you 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 municipal advisory aspects of preparing appropriate legal proceedings and documents, including documents concerning any required election.

- (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).
- (g) In connection with a competitive sale, we will:
 - i. coordinate the preparation of the Official Notice of Sale, the Uniform Bid Form (containing provisions recognized by the municipal securities industry as being consistent with the securities offered for sale) and other such documents which you may request or deem appropriate;
 - ii. submit all such documents for examination, approval, and certification by appropriate officials, employees, and agents of the Issuer, including bond attorneys;
 - iii. coordinate delivery of these documents to a list of prospective bidders;
 - iv. where appropriate, organize investor meetings;
 - v. coordinate the receipt of bids;
 - vi. advise as to the best bid, including acceptance or rejection of the best bid;
 - vii. if a bid is accepted, coordinate the delivery of and payment for the Obligations;
 - viii. assist in verification of final closing figures;
 - ix. provide copies of documents to the purchaser of the Obligations in accordance with the terms of the Official Notice of Sale and the Uniform Bid Form.
- (h) 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.
- (i) Make recommendations as to obtaining municipal bond insurance, a liquidity facility or other 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.
- (j) Attend meetings of governing bodies of the Issuer, its staff, representatives or committees as requested.
- (k) 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; 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, you agree that our fee will be computed as shown on the "Fee Schedule" attached hereto. 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.
6. **Interest Rate Derivatives.** If you decide to consider the use of interest rate derivative products as part of the financing plan for Obligations covered by this Agreement, the Scope of Services above does not include providing advice or services with respect to derivative products.
7. **Other Conditions.** In addition to the terms and obligations herein contained, this Agreement is subject to the following special conditions: NONE
8. **Term of Agreement and Waiver of Sovereign Immunity.** This Agreement shall be one (1) year, plus three (3) optional one-year extensions, not to exceed a total of four (4) years. This Agreement may be terminated by either party upon 30 days written notice. 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 4, 5 and 8 (insofar as they concern indemnity, reimbursable expenses and waiver of sovereign immunity) shall survive any termination of this Agreement.
9. **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.

RBC CAPITAL MARKETS, LLC

By:  _____

Name: Kevin F. Powers

Title: Director

Date: 8/20/2012

ACCEPTANCE BY NEW MEXICO STATE UNIVERSITY

ACCEPTED this 23rd day of August, 2012

By  _____

Name Angela Throneberry

Title Senior Vice President- Admin. & Finance

Date 8/23/12

New Mexico State University

In consideration for the services rendered by RBC Capital Markets, LLC the Issuer agrees that our fee for each issue of Obligations will be as follows (subject to negotiation in the event of special circumstances such as delay in financing or completion of the transaction):

1. **Financial Advisory Services.** As consideration for the services rendered by us and as a reimbursement for the expenses we are to incur, it is agreed that the University will pay, and we are to accept, a fee based upon the following schedule, depending upon the amount of the bond issue or loan agreement involved.

If the amount of an Obligation entered into by the University is:

BOND PROCEEDS

| <u>More Than</u> | <u>And Not More Than</u> | <u>Financial Advisory Fee</u> |
|-------------------------|---------------------------------|--|
| \$0 | \$2,499,999 | \$20,500 |
| \$2,500,000 | \$4,999,999 | \$23,500 |
| \$5,000,000 | \$9,999,999 | \$26,500 |
| \$10,000,000 | \$19,999,999 | \$28,500 |
| \$20,000,000 | No Limit | \$30,500 plus \$0.90 per \$1,000 for all over \$20,000,000 |

RBC CM will bill the University at closing for each issue of Obligations a net amount which will include a fee calculated on the above schedule as well as any out-of-pocket expenses incurred on behalf of the University. Due to corporate policy, reimbursable expenses cannot be paid by RBC CM. However, all expenses incurred during the issuance of bonds will be reviewed by RBC CM for accuracy and forwarded to NMSU for payment from bond proceeds when the bonds are issued. This provides additional savings in Gross Receipts Tax to the University.

If a financing is contemplated but not issued, RBC CM would not charge a fee specific for that transaction. We would request payment of out-of-pocket expenses. If we are providing additional services such as investment advice, review of federal arbitrage compliance, debt policy, or other consulting services, we would charge on an hourly basis at the rate of \$200.00 per hour. An alternative would be an annual fixed fee of \$5,000.00 for these services.

Hourly Rates:

Hourly rates would be charged for advice and services performed that are not related to the issuance of a specific obligation based on the following schedule:

| | |
|---------------------------------|---------------|
| Paul Cassidy, Managing Director | \$175.00/hour |
| Kevin Powers, Director | \$175.00/hour |
| Erik Harrigan, Vice President | \$175.00/hour |
| Financial Analysts | \$125.00/hour |



2. **Fees for Refunding Obligations.** The fee for refundings will be the fee schedule in Section 1 plus 10 percent.

A refunding issue combined with a new money issue will be billed as a separate issue.

3. **Structuring Fee.** In addition to our Financial Advisory fee, we will charge a structuring fee to be negotiated on a case-by-case basis for non-routine, difficult financings. If approved, the additional fees will not exceed 15 percent of the fee schedule in Section 1.

4. **Continuing Disclosure Undertaking.** For obligations that require continuing disclosure, the issuer must provide a written undertaking committing to disclose annual financial information and the timely reporting of 14 material events. This commitment is referred to as the Continuing Disclosure Undertaking. RBC CM will assist NMSU in fulfilling their continuing disclosure responsibilities upon the agreement and receipt of a signed contract which details our scope of services and compensation arrangement. Annual fee will range from \$750.00 to \$1,500.00 plus New Mexico Gross Receipts Tax. This fee may be waived if a transaction is under contract by RBC CM or if a transaction is expected to be completed by RBC CM within three months of the disclosure due date.

RBC CAPITAL MARKETS, LLC

By RBC Capital Markets, LLC.


Name Kevin F. Powers

Title Director

Date May 7, 2012

ACCEPTANCE

ACCEPTED this 23rd day of August, 2012

By 

Name Angela Throneberry

Title Senior Vice President- Admin. & Finance

Date 8/23/12

