

## **Financial Advisor Service Agreement**

THIS AGREEMENT made effective as of the 17<sup>th</sup> day of October, 2017 by and between the City of Clearwater, P.O. Box 4748, Clearwater, Florida 33758, hereinafter referred to as the "City", party of the first part, and Stifel, Nicolaus & Company, Incorporated, 111 N. Magnolia Avenue, Suite 1175, Orlando, Florida 32801, hereinafter referred to as the "Financial Advisor", party of the second part;

### **WITNESSETH:**

**WHEREAS**, the City has determined that there is a periodic need to review capital projects within the City; and

**WHEREAS**, the City has determined that external funding may be required for these projects; and

**WHEREAS**, the City has determined that the most feasible method of securing the required funds is through obtaining funds from various financial markets; and

**WHEREAS**, a qualified financial advisor is required to assist in the preparation of plans, studies, analysis and recommendations to market the financial plans; and

**WHEREAS**, the City issued Request for Proposal 17-17 to perform the required services described herein for a five-year period.

**NOW, THEREFORE**, the City and the Financial Advisor agree to the terms and conditions stated as follows:

### **SERVICES TO BE PERFORMED BY THE FINANCIAL ADVISOR:**

The Financial Advisor hereby agrees to perform the services described in RFP 17-17 Financial Advisor Services in connection with authorization, sale and delivery of financial arrangements on behalf of City's capital needs subject to the conditions and in consideration of payments as hereinafter set forth. The required services include:

1. Review existing debt structure and financial resources to determine available borrowing capacity and refinancing options.
2. Recommend appropriate financial structure for proposed projects.
3. Assist the City with the preparation of cash flow forecasts for proposed issues, addressing debt service requirements and funding sources.
4. Provide advice on terms and features of bonds, timing and marketing of bond issues, market conditions as they relate to future sales, and prices of outstanding bonds.
5. Advise on benefits of negotiated versus competitive bid sales for each issue and assist in dealings with designated underwriter and legal counsel.
6. Assist the City in preparation of a Preliminary Official Statement and Official Statement in conjunction with bond counsel, disclosure counsel and the City.

7. Arrange for the widest possible distribution of the preliminary Official statement to bond underwriters and potential investors.
8. Consult, as needed, with the City staff regarding various financing options or concerns.
9. Assist the City in obtaining the highest possible credit rating(s).
10. Assist with bid opening or negotiated sale with underwriter, as applicable, to advise on recommendation on acceptability of preferred offer.
11. Assist with bond pre-closings and closings, including coordinating printing, signing, and delivery of bonds.
12. Assist in selecting paying agents and other financial intermediaries, as necessary.
13. Advise the City on proposed and actual changes in tax laws and financial market developments that could affect City bond financing plans.
14. Attend City Council meetings and other scheduled City meetings as requested, with reasonable advance notice.
15. Provide expert testimony at validation hearings.

Additional financial advisory services can be performed by the Financial Advisor, but must be mutually agreed upon in writing prior to the commencement of such services.

#### **FEE PAID TO FINANCIAL ADVISOR FOR SERVICES:**

The Financial Advisor's fee shall be as follows:

1. Work Directly Related to Bond Issues: The Financial Advisor shall be paid at closing in accordance with the following schedule:

Minimum Par Amount	Maximum Par Amount	Incremental Fee per \$1,000*
\$0	\$25,000,000	\$1.00
\$25,000,001	\$50,000,000	\$0.90
\$50,000,001	\$75,000,000	\$0.75
\$75,000,001	Unlimited	\$0.50

\*Subject to a minimum fee of \$20,000 for any sized transaction.

2. Work Not Directly Related to Bond Issues: The Financial Advisor shall be compensated for all non-bond issue related work as follows:

Title	Hourly Rate*
Managing Director, Director or Senior Vice President	\$250
Assistant Vice President or Associate	\$175
Analyst	\$125
Administrative Staff	\$50

\*Consulting expenses projected to exceed \$2,000 per project must be approved in writing by the City prior to engagement.

### **COSTS PAID BY THE CITY:**

The City agrees to pay all costs of the bond issue, including but not limited to: fees for attorneys of the City, fee of bond counsel, fee of disclosure counsel, rating agency fees, bond insurance fees, printing costs of the City, printing cost of the Preliminary Official Statement, the Official Statement and all financing related documents, advertising costs, travel expenses of Officials of the City, and travel expenses of the Financial Advisor.

### **GENERAL CONDITIONS:**

- A. Financial Advisor agrees not to participate, either directly or indirectly, as an underwriter in the sale of any Bond issued by the City. It is agreed that the Financial Advisor may, however, purchase or sell any of such Bonds in the secondary market after the expiration of the underwriting period.
- B. Should financing not be obtained, the City shall not be financially obligated to pay the Financial Advisor except as to reimbursement of such expenses as provided herein and such expenses as may be hereinafter approved by the City prior to their being incurred.
- C. Should, in the course of performing services described in this Agreement, the City determine that additional work products are desired of the Financial Advisor, and should the Financial Advisor accept such assignments, then this Agreement may be amended in writing as mutually acceptable to the parties to provide for accomplishment of such additional work products and the basis of payments therefore.
- D. This Agreement shall be in full force and effect for a period of five years from October 17, 2017; however, that each of the City and the Financial Advisor shall have the option, at any time during this period and with its sole discretion to terminate this Agreement, said termination to be effective upon receipt by the non-terminating party of written notice at least ninety (90) days prior to any such termination.
- E. The Financial Advisor agrees to assist the City as provided only on the basis that it is expressly understood and agreed that the Financial Advisor assumes no responsibility to the City or any person for the accuracy or completeness of any information contained in any Preliminary Official Statement or Official Statement issued in connection with the City's financings.
- F. In the event that each of Matthew Sansbury (Managing Director) and Alex Bugallo (Managing Director) should either leave Financial Advisor or be permanently unavailable to assist the City when requested, the City may request a renegotiation of terms of this Agreement or may, at its sole option, terminate this agreement by giving written notice at least ten (10) days prior to such termination. Upon

termination, the City shall have no further obligation to the Financial Advisor for any services.

- G. This agreement embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations of agreements, either verbal or written, between the parties hereto.
- H. The Financial Advisor agrees to protect, defend, indemnify and hold the City and its officers & employees harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses arising out of or due to any grossly negligent act or omission of the Financial Advisor, or its employees or agents. The Financial Advisor shall procure and maintain professional liability insurance with respect to the services performed during the life of this agreement.
- I. The Financial Advisor agrees to transfer or assign to the City upon request, documents, financial analysis, correspondence and memos produced by the Financial Advisor for the benefit of the City.
- J. Any dispute arising out of this Agreement or the performance hereof shall be resolved in binding arbitration before the American Arbitration Association, pursuant to its commercial arbitration rules. Venue for any such arbitration shall be Pinellas County, Florida. EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HERETO.

#### **REGULATORY MATTERS:**

- 1. City's Obligations. The City agrees that its staff and consultants will cooperate with the Financial Advisor and make available any data in the possession of the City necessary to perform financial advisory services and regulatory obligations as described in Exhibit A to this agreement.
- 2. Regulatory Disclosures:
  - a. The City is aware of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Securities and Exchange Commission's adopted rule commonly known as the "Municipal Advisor Rule" (SEC Rule 15Ba1-1 to 15Ba1-8), herein after referred to as the "Rule". The Financial Advisor will be serving as a municipal advisor to the City under the Rule and this agreement documents the municipal advisory relationship between the Financial Advisor and the City.

- b. MSRB Rule G-42 requires that a municipal advisor provide its client with certain written disclosures. Please see Exhibit A to this agreement for those disclosures.
3. Authority to Direct Financial Advisor. The following City individuals have the authority to direct the Financial Advisor's performance of its scope of work under this agreement:

Jay Ravins, Finance Director  
Monica Mitchell, Assistant Finance Director  
Clement Vericker, Debt Manager

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first above written:

Countersigned:

CITY OF CLEARWATER, FLORIDA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

Approved as to form:

Attest:

\_\_\_\_\_  
Assistant City Attorney

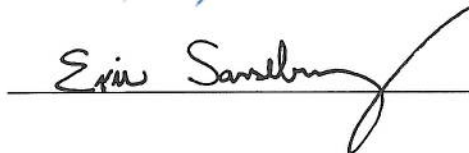
\_\_\_\_\_  
City Clerk

Witnesses:

Stifel, Nicolaus & Company, Incorporated

  
\_\_\_\_\_

By:   
\_\_\_\_\_

  
\_\_\_\_\_

Attest:   
\_\_\_\_\_

## **EXHIBIT A**

### **City of Clearwater, Florida Financial Advisor Service Agreement**

#### **MSRB Rule G-42 Disclosures**

As municipal advisor to the City of Clearwater, Florida (“you”), Stifel Nicolaus (“Stifel” or “we”) is subject to the rules of the Municipal Securities Rulemaking Board (MSRB), including MSRB Rule G-42, which took effect on June 23, 2016. We do not believe that Rule G-42 has substantively changed our obligations to you. The rule does, however, direct us to make certain disclosures to you. Please review the following disclosures and contact your Stifel municipal advisor if you have any questions.

#### **Our Duties as Your Municipal Advisor**

Rule G-42 describes our basic duties to you. Most importantly, we owe you a fiduciary duty, the principal element of which is a duty of loyalty. Under the duty of loyalty, we are required to deal honestly and in the utmost good faith with you and to act in your best interests without regard to our financial or other interests. We may not serve as your municipal advisor if we believe that we have any conflicts of interest that we cannot manage or mitigate so that we can act in your best interests.

Rule G-42 also provides that we owe you a duty of care. As part of that duty, we must possess the degree of knowledge and expertise needed to provide you with informed advice. Also, under that duty, when we make recommendations to you or help you to evaluate the recommendations of others, we may need to ask questions to make sure that we have all the relevant facts.

#### **Disclosure of Conflicts**

Rule G-42 requires us to disclose to you any known material, actual or potential conflicts of interest that could reasonably be expected to impair our ability to provide you with advice, including any conflicts associated with contingent fee arrangements. As described in our engagement letter, the payment of our fee will be contingent on the closing of the bond issue described in the engagement letter [and the amount of compensation will be based on a percentage of the principal amount of the bond issue]. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since we may have an incentive to recommend a transaction to you that is unnecessary or to recommend that the size of the bond issue be larger than is necessary. We would, of course, be willing to discuss an alternative fee arrangement, if that is your preference.

Stifel has not identified any additional potential or actual material conflicts that require disclosure.



## Legal and Disciplinary Event Disclosures

Each firm that is registered as a municipal advisor with the U.S. Securities and Exchange Commission (SEC) is required to file Form MA with the SEC and update that form periodically and as events change. The firm is also required to file a Form MA-I for each of its employees who is engaged in municipal advisory activities. Stifel's most recent Form MA and the Form MA-I for each current Stifel municipal advisor employee may be found on the SEC's EDGAR website using the following hyperlink:

<http://www.sec.gov/cgi-bin/browse-edgar?CIK=0000094403&owner=exclude&action=getcompany&Find=Search>.

Item 9 of Form MA requires each municipal advisor firm to disclose any criminal, regulatory violations, or self-regulatory violations and certain civil litigation. Because we are a broker-dealer firm, Form MA permits us to cross-reference to our Form BD, which is available on the website of the Financial Industry Regulatory Authority (FINRA), and our Form ADV, which is available on the SEC website. For your convenience, you may access our Form BD by using the following hyperlink: <http://brokercheck.finra.org/Firm/Summary/793>. You may access our Form ADV by using the following hyperlink: <http://www.adviserinfo.sec.gov/IAPD/Firm/793>. Item 6 of each Form MA-I requires comparable disclosure about a municipal advisor individual, as well as customer complaint, arbitration, investigation, termination, financial, and judgment/lien disclosure. When an individual has a disciplinary history, Form MA-1 permits us to cross-reference to that individual's Form U-4. The disciplinary history on an individual's Form U-4 is accessible entering the individual's name in FINRA's "Broker-Check" service, using the following hyperlink: <http://brokercheck.finra.org/>.

Our Form MA was amended on July 14, 2017 to reflect the following settlement with FINRA:

In June 2017, Stifel agreed to pay a fine of \$125,000 to settle an alleged violation of MSRB Rule G-23. Stifel determined that a private placement with the county in which Stifel's school district client was located was a lower cost alternative for the school district than a public offering. Stifel presented the idea to the school district, which agreed to hire Stifel as its placement agent. Nevertheless, two months elapsed before Stifel provided disclosure to the school district that, in its role as placement agent, it was not a fiduciary to the school district as required by MSRB Rule G-23. The FINRA settlement document states that: "Because it failed to provide the role disclosure required by MSRB Rule G-23 in a timely manner, Stifel acted as both financial advisor and placement agent for the [school district] in connection with the [Bonds], in violation of MSRB Rule G-23." The alleged violation took place in 2012. Stifel now has robust procedures in place that are designed to result in timely G-23 disclosures to underwriting/placement clients.

In our view, none of the legal and disciplinary event disclosures described in our Form MA is material to your evaluation of us or the integrity of our management or advisory personnel.

### **Evaluation of Recommendations/Suitability**

As provided in our engagement letter, we will assist you in evaluating recommendations, whether made by Stifel or, upon your written request, by third-parties, such as underwriters. We will provide you with our evaluation of the material risks, potential benefits, structure, and other characteristics of the transaction or product. We will discuss with you why we think a recommendation we make is suitable for you. In the case of recommendations made by an underwriter or other third-party that you request in writing that we review, we will discuss with you why we think the recommended transaction or product is or is not suitable for you. We will also inform you of any other reasonably feasible alternatives considered.

In order for us to evaluate whether we think a recommendation is suitable for you, we are required to consider the following factors and we may need information from you about those factors, much as if you were opening a brokerage account:

- financial situation and needs,
- objectives,
- tax status,
- risk tolerance,
- liquidity needs,
- experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended,
- financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction were reasonably expected to be outstanding, and
- any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.