

ORDINANCE NO. 2018-74
INTRODUCED BY: MR. MAERSCH

4149

AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH MAS FINANCIAL ADVISORY SERVICES LLC, A MUNICIPAL SECURITIES ADVISOR, FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF IMPROVEMENT BONDS TO UPDATE AND MODERNIZE WATER METERS, AND AUTHORIZING THE MAYOR TO SEEK BIDS FOR ISSUANCE OF THE IMPROVEMENT BONDS AND AUTHORIZING THE MAYOR, LAW DIRECTOR AND MAS FINANCIAL ADVISORY SERVICES LLC TO OBTAIN BOND COUNSEL AND DECLARING AN EMERGENCY.

WHEREAS, the Village of Chagrin Falls has determined that it is appropriate to issue Improvement Bonds in the total amount not to exceed One Million One Hundred Thousand Dollars (\$1,100,000.00), with a maximum twelve (12) year maturity, as a result of favorable interest rates for tax-free bonds; and

WHEREAS, the Village has worked with MAS Financial Advisory Services LLC ("MAS") in the past on financing matters, and has found MAS to be reliable and likely to obtain financing for the issuance of improvement bonds at a more favorable rate; and

WHEREAS, the Village Council has determined that the process to issue improvement bonds will require independent bond counsel to be hired at the earliest possible date and in order to be able to lock in a favorable interest rate, engage MAS immediately as municipal securities advisor.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CHAGRIN FALLS, STATE OF OHIO:

SECTION 1. That the Mayor is authorized and directed to enter into a Contract, the form of which is attached hereto as Exhibit "A" with MAS for the purpose of locating and facilitating a loan not to exceed One Million One Hundred Thousand Dollars (\$1,100,000.00) in the form of tax-free improvement bonds that will have a maximum twelve (12) year maturity, and pursuant to such Contract MAS shall be paid a fee of Fifteen Thousand Dollars (\$15,000.00), which fee shall only be due and payable upon the successful placement of the

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improvement bonds and the completion of financing and the funding of such fee shall be paid from the bond proceeds issued to the Village when the tax-free improvement bonds are placed and the transaction is closed.

SECTION 2. MAS is hereby authorized, on behalf of the Village of Chagrin Falls to solicit bids for the not to exceed One Million One Hundred Thousand Dollars (\$1,100,000.00) maximum twelve (12) year maturity tax-free improvement bonds and to make a recommendation to the Village of Chagrin Falls on the best bid received, at which time the Village Council shall determine whether or not to proceed with the issuance of the tax-free improvement bonds in an amount not to exceed One Million One Hundred Thousand Dollars (\$1,100,000.00), upon such terms and conditions as are deemed acceptable to the Village Council.

SECTION 3. MAS, the Mayor and the Law Director are hereby authorized and directed to solicit proposals from independent bond counsel, authorized to practice law in the State of Ohio who will act as independent bond counsel for the purpose of issuance of the tax-free improvement bonds as contemplated by this Ordinance. Upon receipt of the proposals from bond counsel, the Mayor and Law Director shall recommend to Council the most appropriate proposal to be considered for acceptance by the Village Council.

SECTION 4. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

SECTION 5. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.

SECTION 6. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of the inhabitants of the Village and for the further reason that this Ordinance is necessary to take effect immediately in order to take advantage of low interest rates for tax-free bond issuance, in a competitive market place; wherefore provided it receives the affirmative vote of at least two-thirds (2/3) of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage by this Council and approval by the Mayor; otherwise, it shall take effect and be in force after the earliest period allowed by law.



Council President

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Submitted to the Mayor for
approval on this 11 day of December, 2018

Approved by the Mayor this

11 day of December, 2018

ATTEST:



Clerk of Council



Mayor

MAS Financial Advisory Services LLC

Exhibit "A"

MUNICIPAL ADVISORY AGREEMENT

1. **Advisory Services Agreement** - This agreement will set forth the terms of the Municipal Advisory Agreement (the "Agreement") pursuant to which MAS Financial Advisory Services LLC, will serve as the Municipal Advisor to the Village of Chagrin Falls, Ohio ("Village"). This Agreement is made and entered into this ___th day of November, 2018, between the Village and MAS Financial Advisory Services LLC, ("MAS") Matthew A. Stuczynski as President.

2. **Scope of Advisory Services** - To fulfill its duties as Advisor to the Village of Chagrin Falls under this Agreement, MAS may perform, but is not limited to performing, the following activities:
 - (a) Serve as the Village's independent registered municipal advisor ("Municipal Securities IRMA") as it pertains to the issuance of municipal securities as contemplated and defined by Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

 - (b) Submit written recommendations with respect to issuance of tax free improvement bonds in an amount not to exceed one million one hundred thousand dollars (\$1,100,000) that will address, among other things, 1) the method of sale (competitive or negotiated), 2) the approximate date of issuance, 3) interest rate structure, 4) interest payment dates, 5) a schedule of maturities, 6) early redemption options, 7) security provisions, and 8) any other matters that the Village considers appropriate to the circumstances of the debt. MAS will review the preliminary plan of finance with Village staff and will submit an amended final recommended plan of finance that will be presented for approval by the Village's governing body.

 - (c) Review all bond issuer solicitations for a private placement and assist to evaluate the solicitations in a manner consistent with Village instructions. In connection with such solicitations, MAS will evaluate each proposal and assist to determine the merits of each proposal.

 - (d) With respect to competitive sales, assist to draft the notice of sale that is consistent with Village approved debt issuance. Upon the receipt of the competitive bids, we will assist to determine the lowest and best bid.

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- (e) Assist in selecting a date for the issuance of the debt and advise the Village 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 the interest rates or bidding conditions.
- (f) Maintain liaison with the bond attorneys selected by the Village and any other attorneys that may be a party to the transaction and assist in all financial advisory aspects involved in the preparation of appropriate legal proceedings and authorizing documents.
- (g) Review and comment on the preparation of the Village disclosure documents including the Preliminary Official Statement and Official Statement and any other material pertinent to the disclosure of the transaction's terms and conditions. In this regard, it is understood that one or more of the bond attorneys, your counsel or counsel to the purchasers of the debt or counsel to the third party to any transaction 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 (subject to market exceptions).
- (h) Assist in the assembly and transmittal to the bond attorneys of information provided by or on behalf of the Village that is requested by the bond attorneys in connection with the preparation of the documents evidencing the legal proceedings for the debt.
- (i) Assist to make arrangements for the verification by an independent agent of any calculations incident to the debt that is required.
- (j) Assist in the selection of third-party service providers that may be necessary to engage for the debt issuance.
- (k) Make recommendations to the Village on the matter of credit rating(s) for the proposed debt. Upon the request of the Village, MAS will coordinate the preparation of the information to be submitted to any rating agency. In those cases where it is appropriate to present personally information to any rating agency, MAS will arrange for and assist in such presentation.
- (l) Make recommendations to the Village as to the advisability of obtaining

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municipal bond insurance or other credit enhancement, or qualifications for such insurance or enhancement, for the debt. When directed by the Village, MAS will coordinate the preparation of such information as is required for submission to the appropriate company, institution or institutions. In those cases where the advisability of personal presentation of information to the appropriate company, institution or institutions, may be indicated, MAS will arrange for and assist in such personal presentations.

- (m) Attend any and all meetings of the Village governing body, committees, its staff or representatives as requested at all times when MAS may be of assistance or service and the subject of the financing is to be discussed.
- (n) After closing, MAS will deliver to the Village and its paying agent(s) definitive records, including a schedule of annual debt service requirements, or other payment commitments regarding the obligations.
- (o) Submit written recommendations with respect to the structure of the financing and any other matters that may be appropriate to the circumstances.

3. Engagement Tenet and Results – As an independent municipal advisor with a fiduciary responsibility to the Village, all actions taken and recommendations made by MAS in performing its duties under this Agreement will be completed with the financial interests of the Village in mind. As a fiduciary, MAS has a “duty of loyalty” to its clients which means that it must deal honestly in good faith and act in its client’s best interest without regard to any consideration given to the financial or other interests of MAS. In addition, MAS has a “duty of care” to its clients which means that it must make a reasonable inquiry as to the facts and circumstances relevant to the recommendation of a course of action to be taken by its clients. Accordingly, MAS actions and recommendations will be based on its best professional judgment given then current market conditions and client circumstances with the goal of obtaining the most favorable financing results for the Village. It is understood and acknowledged by the Village, however, that the achievement of such goal is not and cannot be guaranteed by MAS due to market and other factors beyond its direct control.

4. Client Supplied Information - While this Agreement is in effect, the Village agrees that it will provide or cause to be provided to MAS information relating to the Village, the security for the Obligations, and other matters that MAS considers appropriate to enable it to perform its duties under this Agreement. The Village agrees that all such materials and information will be true, correct and complete, and that it will update such information during the course of the engagement, as appropriate, and that all projections provided by it will have been prepared in good faith and based upon reasonable assumptions. The Village acknowledges and agrees that MAS will rely upon such materials, information and projections

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without independent verification, with respect to all information provided by or on behalf of the Village to MAS under this Agreement. If requested by MAS, the Village agrees to obtain the required certifications from its appropriate representatives as to the accuracy of such information and to use its best efforts to obtain certifications (in a form reasonably satisfactory to MAS) from representatives of other parties where appropriate. The Village acknowledges that MAS shall be entitled to rely on the accuracy and completeness of all information provided by or on behalf of the Village.

5. **Client Disclosure Responsibilities** – The Village acknowledges that it is responsible for the contents of its disclosure document and is subject to and may be held liable under federal or state securities laws for violations thereof, including misleading or incomplete disclosure.
6. **Regulatory Disclosures** – MAS is a registered municipal advisor with the Municipal Securities Rulemaking Board (MSRB) and the Securities and Exchange Commission (SEC). MAS is not subject to any legal or disciplinary event. Information requirements concerning MAS registration with the SEC and its forms MA and MA-I can be found at the SEC web site <https://www.sec.gov/edgar/searchedgar/companysearch.html> referencing file number 867-02141.
7. **Non Discrimination** - MAS will not discriminate with regard to the employment of persons, or refuse to continue the employment of any person, on account of the race, creed, color, sex, national origin, or other protected class of such person or persons. In addition, MAS will not discriminate in connection with the Agreement as it relates to any underwriting or lender recommendations made by MAS.
8. **Conflicts of Interest** - MAS knows of no actual or potential conflict of interest of MAS nor its employees, officers, agents or affiliates impairing its ability to render unbiased and competent advice to or on behalf of the Village or to fulfill its fiduciary duty to it. MAS has no affiliate that provides advice to or on behalf of the Village that are directly or indirectly related to the activities of MAS. No payments have been made by MAS directly or indirectly to obtain or retain the services outlined in this Agreement. No payments have been received by MAS from third parties to enlist the recommendations resulting from this Agreement or any transactions or services associated with the services provided by MAS under this Agreement. Other than any services requested by the Village and documented by a separate agreement with the Village, MAS has no fee splitting arrangement with any provider of investment or other financial product services.
9. **Municipal Advisory Agreement Fees** - In consideration for the services rendered pursuant to this Agreement; the Village agrees that the MAS fee will be computed as shown on the "Municipal Advisory Agreement Fee Schedule" attached hereto and will become immediately due upon the appropriate submission of a written invoice. The Village agrees and acknowledges that MAS will not be entitled to the reimbursement of any actual "out-of-pocket" expenses incurred in connection with

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the provision of its services.

10. **Scope of Services Limitation** - In the event that the Village decides to consider the use of financial products other than the services outlined in this Agreement, it may request from and MAS may choose to submit to the Village, a separate proposal to provide such services. Such assistance will be described in a separate scope of services letter that will specify the procedures MAS has been requested to perform and the extent of assistance MAS will provide. Fees for such services will be stated in the letter and will be in addition to those described in this Agreement.
11. **Duration of Agreement** - This Agreement shall be for a period of 6 months from its date of execution by the Village (the "Agreement Period"). This Agreement may be terminated by either party upon 30 days written notice.
12. **Agreement Liability Limits** - Notwithstanding anything in this Agreement, MAS shall indemnify and hold the Village harmless only against any losses, claims, damages or liabilities to which it may become subject by reason of, or as a result of, MAS negligence, recklessness or willful misconduct; provided, however, that such losses, claims, damages or liabilities must not be attributable to the Village own negligence or misconduct.

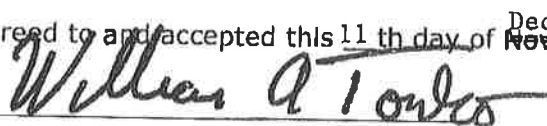
The Village understands and acknowledges that MAS will carry \$1,000,000 of professional liability insurance.
13. **Entire Agreement** - This Agreement constitutes the entire Agreement of the parties, which may only be amended only in writing signed by the authorized signatories for the Village and MAS. The Village's acceptance of this Agreement will be deemed to have occurred on the date the Agreement is signed and dated by a duly authorized representative(s) of the Village.
14. **Employees of MAS Financial Advisory Services LLC** - All individual employed by MAS that provide personal services to the Village are not public employees for the purpose of ORC Chapter 145, as amended.

By:



Matthew A. Stuczynski
MAS Financial Advisory Services LLC

Agreed to and accepted this 11th day of ~~November~~ December, 2018



Mayor William Tomko
Village of Chagrin Falls, Ohio

MAS Financial Advisory Services LLC

MUNICIPAL ADVISORY AGREEMENT FEE SCHEDULE

In consideration for the services rendered by MAS, the Village of Chagrin Falls agrees to pay MAS fees as outlined by this Municipal Advisory Agreement Fee Schedule.

Fee Schedule

Debt Issuance: Upon delivery of the Bonds, the Village will pay MAS Financial Advisory Services a fee of \$15,000.

Fee Sharing – In limited situations, MAS may, with the written consent of its client, collaborate with other registered municipal advisors if, in the opinion of MAS, such firms can provide specialized services required for the engagement that are beyond MAS capabilities or resources. In such situations, the collaborating advisor will provide services under fee share arrangement as reflected in this Agreement and agreeable to the Village.