

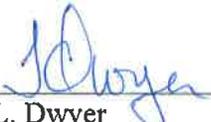
RESOLUTION 2020 - 23

RESOLUTION OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AUTHORIZING EXECUTION OF AN AGREEMENT WITH PHOENIX ADVISORS, LLC, FOR CONTINUING DISCLOSURE AGENT SERVICES AND INDEPENDENT REGISTERED MUNICIPAL ADVISOR OF RECORD

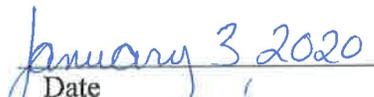
NOW, THEREFORE BE IT RESOLVED, by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris, State of New Jersey, that the Chief Financial Officer is authorized to execute and submit an Agreement with Phoenix Advisors, LLC, for Continuing Disclosure Agent Services and Independent Registered Municipal Advisor of Record, pursuant to Borough Resolution #2014-91, adopted on August 5, 2014.

This Resolution shall take effect immediately.

I HEREBY CERTIFY this to be a true and correct Resolution of the Mayor and Borough Council of the Borough of Mount Arlington and adopted on January 2, 2020.



L. Dwyer
Acting Borough Clerk



Date



**2020
AGREEMENT
for
CONTINUING DISCLOSURE and
INDEPENDENT REGISTERED MUNICIPAL ADVISOR SERVICES**

THIS AGREEMENT, valid for the calendar year noted above, (the "Agreement") by and between Mount Arlington Borough, 419 Howard Boulevard, Mount Arlington, NJ 07856 (the "Issuer"), and Phoenix Advisors, LLC, 625 Farnsworth Avenue, Bordentown, New Jersey 08505 ("Phoenix Advisors") for the provision of professional services as more fully described in the accompanying Scope of Services.

WITNESSETH:

WHEREAS, the Issuer has heretofore agreed through the execution of Continuing Disclosure Agreements ("CDAs") in connection with one or more bond issuances to provide specific financial and other information and notices, within specified timeframes, to the marketplace in a manner prescribed by the regulators of the underwriter that purchased said bond issues; and

WHEREAS, Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") governs the many aspects of continuing disclosure; and

WHEREAS, Phoenix Advisors provides continuing disclosure agent services, has the expertise as Continuing Disclosure Agent ("Disclosure Agent"), and has hereunder been appointed by the Issuer to serve as its Disclosure Agent until the expiration of this Agreement, as defined in Section 4 herein; and

WHEREAS, Phoenix Advisors, being duly registered as a Municipal Advisor with the Securities and Exchange Commission (the "SEC") and the Municipal Securities Rulemaking Board (the "MSRB"), provides professional municipal advisory services and has heretofore been appointed by the Issuer to be its Independent Registered Municipal Advisor ("IRMA") and to offer such municipal advisory services as may be requested until the expiration of this Agreement, as defined in Section 4 herein; and

WHEREAS, the parties desire to set forth herein the terms and conditions under which Phoenix Advisors will provide such services to the Issuer.

NOW, THEREFORE, THE PARTIES HERETO, IN CONSIDERATION OF MUTUAL COVENANTS HEREIN CONTAINED AND OTHER GOOD AND VALUABLE CONSIDERATION, EACH INTENDING TO BE LEGALLY BOUND, HEREBY AGREE AS FOLLOWS:

Section 1 - CONTINUING DISCLOSURE SERVICES

- I. The Issuer's Disclosure Agent will assist the Issuer in meeting the secondary market disclosure obligations delineated in relevant CDAs as specified under the Rule, including any required posting of material event ("Event") notice.

The Issuer understands and acknowledges that its full cooperation is requisite to the Disclosure Agent's success assisting the Issuer in maintaining compliance with its CDAs and requirements of the Rule. The Issuer agrees that it will:

- i. Supply all documents required to be filed under its CDAs to the Disclosure Agent promptly, when available.
 - ii. Notify the Disclosure Agent immediately of any Event requiring the filing of a notice under the Rule or its CDAs.
- II. This Agreement applies to bonds issued since the effective date of the secondary market disclosure requirements of the Rule unless said bonds are exempt under the Rule.
- III. Phoenix Advisors will perform such services relating to its role as the Issuer's Disclosure Agent to a professional standard. Described below is the scope of the Disclosure Agent services and methodology:

- i. **Codify Issues That Are Subject to Continuing Disclosure**

To make timely and accurate disclosure filings on the MSRB's Electronic Municipal Market Access Data Port website ("EMMA"), the Disclosure Agent will obtain and examine the Issuer's Official Statements relating to the outstanding bond issues to research the requirements found in the CDAs.

- ii. **Security Setup**

We enter in our proprietary database details of each outstanding issue and its filing obligations. This security setup applies our database functionality to your issues.

- iii. **Review Data contained in Official Statements**

The Disclosure Agent reviews the Issuer's Official Statements for information concerning disclosure obligations and discusses with the Issuer its filing or reporting obligations. Our review will include other financial obligations undertaken of which we are aware.

- iv. **Monitor, React and Meet Filing Deadlines**

The schedule of filing dates for outstanding bond issues is part of our database to ensure that required filings are made. We monitor each client's different deadlines to ensure timely filing of necessary documents. Our proprietary database produces ongoing reports that are used to alert the Issuer to approaching filing deadlines providing an essential safeguard for the timely filing of continuing disclosure information.

The Disclosure Agent endeavors to gather required documents from public sources, e.g., state and local websites, to lessen the client's burden. Phoenix Advisors takes a proactive approach to client service. When we must obtain documents from clients, we provide email reminders sufficiently well in advance of upcoming deadlines, then follow up as necessary until completed on EMMA.

- v. **File Financial and Operating Data to Meet Your Obligations**

In addition to filing Audited Financial information, CDAs require the filing of Operating Data. If the operating data is prepared with the assistance of the Disclosure Agent, the report will typically contain information consistent with the statistical data found in relevant Official Statements. This process often requires collaboration with the issuer and other of the issuer's retained professionals.

- vi. **File Documents Uniformly, Accurately, and Promptly**

EMMA is a powerful resource for investors, analysts, and, importantly, underwriters that bid on debt issues. Easy identification on EMMA of filed documents is essential. The Disclosure Agent uses consistent naming and filing conventions, applying clear descriptive titles to filings, and correctly associates them with the right CUSIP on EMMA. The result is a uniform and logical chronology of data where EMMA users can easily find what they need.

The Disclosure Agent files documents on EMMA within forty-eight (48) hours of receipt. However, we file most documents on the same business day they are received.

- vii. **Confirm Filings to Client Promptly**

The MSRB generates a submission confirmation for all disclosure filings made on EMMA. The Disclosure Agent will promptly send the Issuer an email copy of the MSRB's proof of required, voluntary, or Event filings made on the Issuer's behalf.

- viii. **Coordinate and Submit Voluntary Information**

Voluntary filings are proper because the marketplace is hungry for information. We gather documents including Budgets, Debt Statements, and unaudited financials from issuers then file them as voluntary submissions. The more information, carefully labeled, the Issuer provides, the more professional and forthcoming their appearance is to market participants.

- ix. **Monitor Need for Material Events and Timely Filing of Notices**

There is a significant list of items that regulators deem to be Events, whose incurrence, require a notice to be filed within ten (10) business days of the Event on EMMA. The occurrence of an Event is not apparent to those who are not directly involved with a transaction or with the Issuer's financial operations. It is the Issuer's responsibility to notify the Disclosure Agent of any reportable Event.

- x. **Actively Monitor Issuer Rating Changes**

Rating changes are events that require Event Notice filing on EMMA. The Disclosure Agent's staff endeavors to regularly monitor rating agency news and updates for rating changes that affect the Issuer, and we file the appropriate Event notice. However, Issuers are always notified by the rating agencies when their ratings are adjusted, and when so told, the Issuer must alert the Disclosure Agent.

- xi. **Monitor Bond Insurer and Program Rating Changes**

If a municipal bond insurer or a state program, e.g., a school bond enhancement program, is affected by a rating change, then all the bonds that carry that

insurance or participate in that program will undergo a rating change, too. We monitor these types of rating changes, determine which, if any, of our clients are affected, and file the appropriate Event notices.

xii. **Provide a Comprehensive Report Each Fiscal Year**

We know the importance of documentation and well-organized files. The Disclosure Agent prepares a continuing disclosure report (“Annual Report”) each year that shows every issue on which there is a continuing disclosure obligation, every filing, and every Event notice filed on the Issuer’s behalf during the year on EMMA. The Annual Report also recaps a five (5) year history of the Issuers filings. Investors, underwriters of bonds, and the Issuer want to see the record of filing history. An accurate record during this timeframe is vital to the Issuer when it prepares Official Statements since a misstatement in such a document could have serious legal consequences.

xiii. **Acceptance of Annual Report**

The Annual Report highlights any exceptions to required filings and the timeliness of filings. The Issuer must carefully review said report and relay to the Disclosure within ten (10) business days, any error, discrepancy, omission, or concern relating to the accuracy or completeness of the Annual Report.

We, the Issuer and Phoenix Advisors, agree that after ten (10) business days, absent notice from the Issuer, the Annual Report is accepted by the Issuer is accurate and complete.

Section 2 - CONTINUING DISCLOSURE SERVICES COMPENSATION

- I. The bond Issuer will compensate Phoenix Advisors for its services as Disclosure Agent, in accordance as set forth below:

i. **Disclosure Agent Service:**

\$1,050 – base fee (for up to three (3) outstanding issues), plus \$100 for each additional outstanding obligation, if filings are required.

There is a set-up charge for each new bond issuance. The setup fee is \$450 but is discounted to \$200 if Phoenix Advisors serves as Municipal Advisor.

An amendment made to the Rule, effective February 27, 2019, increases the number of Events, to be recorded on EMMA. Phoenix Advisors will charge \$250 for each Event filing made under the Rule’s new Events. Phoenix Advisors will waive this fee if engaged as Municipal Advisor on a transaction that involves such Event filing.

All fees are invoiced annually.

Section 3 – INDEPENDENT REGISTERED MUNICIPAL ADVISOR

- I. Under the Dodd-Frank law, the SEC requires that any person or entity that provides advice concerning the issuance of municipal securities be licensed and regulated by the SEC and the MSRB to provide any such advice.
 - i. Professionals providing advice to the Issuer must hold a Municipal Advisor Series 50 license. Additionally, persons supervising the provision of municipal securities advice must possess a Series 54 Municipal Principal license.
 - ii. Phoenix Advisors professionals are Series 50 licensed and as appropriate a Series 54 license. Importantly, all licensees are subject to a continuing education protocol.
 - iii. Under the SEC and MSRB regulation, the Municipal Advisor owes a Fiduciary Obligation to the Issuer.
- II. There is no separate fee, financial cost, or obligation concerning the Issuer's appointment of Phoenix Advisors as the Issuer's Independent Registered Municipal Advisor ("IRMA" or "Municipal Advisor"). As the Issuer's IRMA, we will be available to answer general questions concerning outstanding debt issues, market conditions, prepare a preliminary project analysis, or preliminarily review financing proposals received by the Issuer on an as-requested basis.
 - iv. The Issuer, through designation of an IRMA, allows third parties, primarily broker-dealer underwriting firms, but also other professional disciplines to submit proposals and ideas concerning financings to the Issuer.
 - v. Failure to actively seek advice from the Municipal Advisor means there is no one on your side appropriately licensed to advise the Issuer concerning the issuance or structure of municipal obligations, including bonds, notes, leases or bank loans the Issuer may embark.
- III. When and if the Issuer requests the Municipal Advisor's involvement in a debt issuance, the undertaking of a financial obligation, an in-depth evaluation of a proposal or project, perform a consultant service, or assist with rating agency surveillance, a separate Fee Addendum to this Agreement together with a scope of service will be provided for the Issuer's acknowledgement.

Section 4 – AGREEMENT TERM AND CONDITIONS

- I. Neither Phoenix Advisors nor any individual representing Phoenix Advisors possesses any authority concerning any decision of the Issuer or any official of the Issuer beyond the rendition of information or advice. Phoenix Advisors is not legal counsel nor an accountant and is not providing legal or accounting guidance. None of the services contemplated in this Agreement shall be construed as legal services or a substitute for legal services. The Issuer hereby acknowledges its responsibility concerning federal securities laws and represents its intention to comply in all respects with federal securities laws.
- II. This Agreement is subject to annual renewal and may be terminated by either the Issuer or Phoenix Advisors upon thirty (30) days' prior written notice.
- III. This Agreement shall be governed by the laws of the State of New Jersey.

IN WITNESS WHEREOF, The Issuer and Phoenix Advisors have caused this Agreement to be duly executed by its authorized representative, as of the day and year first above written.

Mount Arlington Borough

By: Carolyn Rinaldi
Carolyn Rinaldi, Chief Financial Officer

PHOENIX ADVISORS, LLC

By: David B. Thompson
David B. Thompson, Chief Exexutive Officer