

**RESOLUTION NO. 162 -2010, AUTHORIZING PAYMENT
OF CERTAIN CLOSING COSTS INCURRED RELATIVE TO THE
ACQUISITION OF THE COHALAN COURT COMPLEX**

WHEREAS, the County of Suffolk contracts with Capital Market Advisors (CMA) for municipal financial advisory services, which contract is currently in effect (the Agreement); and

WHEREAS, the Agreement obliges CMA to advise the County of pertinent market factors and expected trends in interest rates and to make recommendations, when appropriate, for alternative financing methods; and

WHEREAS, in fulfillment of its obligation under the Agreement, CMA presented an opportunity to the County whereby if the County conducted two refunding sales to acquire the Cohalan Court Complex it would realize significant savings of ~ \$10 million during the term of the financing (the Cohalan transaction); and

WHEREAS, CMA also advised that if the Cohalan transaction could be timed to meet the October 15, 2009 call date inherent in the issues to be refunded then the County would realize a significant amount of the savings (~ \$5.2 million) in the 2009 fiscal year; and

The Cohalan Transaction

WHEREAS, this Legislature approved Legislative Resolution No. 273-2004, "Authorizing The Issuance Pursuant To Section 90.10 Of The Local Finance Law Of Refunding Bonds Of The County Of Suffolk, New York, To Be Designated "Public Improvement Refunding (Serial) Bonds", And Providing For Other Matters In Relation Thereto And The Payment Of The Bonds To Be Refunded Thereby" on March 23, 2004 which included the \$30,595,000 Public Improvement (Serial) Bonds 1999 Series B financing of the County-owned portion of the John P. Cohalan Court Complex; and

WHEREAS, this Legislature approved Legislative Resolution No. 541-2009, "Establishing Intention Of The Legislature To Move Forward With The Purchase Of The John P. Cohalan Court Complex" on June 23, 2009; and

WHEREAS, this Legislature approved Legislative Resolution Nos. 637-2009, "Amending The 2009 Capital Budget And Program And Appropriating Funds In Connection With The Acquisition Of The Partial Interest In The John P. Cohalan Court Complex, Constituting The Portion Of Facility Not Currently Owned By The County, From The Suffolk County Judicial Facilities Agency (CP 1137)," and 642-2009, "Bond Resolution Of The County Of Suffolk, New York No. -2009, Authorizing The Issuance Of \$66,000,000 Bonds To Finance A Part Of The Cost Of The Acquisition Of A Partial Interest In The John P. Cohalan Court Complex Constituting The Portion Of The Building Not Currently Owned By The County (CP 1137)" on August 4, 2009; and

WHEREAS, Bond Counsel review of the proposed refundings determined that a major portion of the sale would have to be structured as a federally taxable, rather than as a tax-exempt issue; and

WHEREAS, a federally taxable issue would yield a higher interest cost to the County than the interest cost that would be realized from a tax-exempt issue; and

WHEREAS, to offset the higher interest cost of a federally taxable issue and maximize potential savings, CMA recommended the alternative financing method of conducting the tax exempt and taxable refundings as competitive, rather than negotiated direct placement sales; and

WHEREAS, the refunding of the tax exempt issue in the sum of \$15,435,000 closed on September 3, 2009 and the refunding of the taxable issue in the sum of \$64,900,000 closed on October 29, 2009; and

WHEREAS, the two refundings on the Cohalan transaction has yielded ~ \$10 million savings to the County; and

WHEREAS, all financial advisory services on the refundings have been satisfactorily provided by CMA; and

THE CMA CONTRACT

WHEREAS, the Agreement was compiled based on the County's prior borrowing history which typically consisted of four (4) transactions per year issued as two (2) bond sales to fund capital projects and two (2) note sales for cash flow purposes; and

WHEREAS, the Agreement provides for an annual retainer fee to serve as compensation for financial advisory services related to the County's typical annual bond and note issues which are normally conducted as competitive and tax-exempt sales; and

WHEREAS, the Agreement provides usual and ordinary compensation to CMA for non-competitive transactions which fall outside of the County's typical annual bond and note issues at a per bond rate of \$0.95 per each \$1,000 of par amount of the bonds; and

WHEREAS, at the time the Agreement was originally executed, the idea of the County conducting transactions outside of the County's typical annual bond and note issues as competitive issues hadn't been envisioned; and

WHEREAS, the financial services rendered by CMA in connection with the Cohalan transaction were considered extraordinary since they fell outside of the County's typical annual bond and note sales; and

WHEREAS, it was the understanding of this Legislature and CMA that CMA would be compensated according to the per bond rate of \$0.95 per \$1,000 of par amount of the bonds, as testified at the August 4, 2009 General Meeting of this Legislature; and

WHEREAS, it was the intention of the Department of Audit and Control (the Department) to compensate CMA for financial services rendered in connection with the Cohalan transactions according to the per bond rate of \$0.95 per \$1,000 of par amount of the bonds; and

WHEREAS, all other costs of issuance related to the \$15,435,000 and \$64,900,000 issues have been or will be paid, and consist of \$25,000 and \$75,000,

respectively, for Bond Counsel services, \$10,000 for JFA Counsel services, \$21,000 for building appraisal costs and \$20,076 and \$44,374, respectively for Rating Agency fees; and

WHEREAS, it is customary to write the costs of issuance into the proceeds from a refunding transaction, the funds for payment of the financial advisory services related to the two refundings are currently available without need for additional County appropriation; now, therefore be it

1st **RESOLVED**, that payment to CMA for the provision of financial advisory services related to the acquisition of the Cohalan Court Complex according to the per bond rate of \$0.95 per each \$1,000 of par amount of the bonds sold amounting to \$14,663 relative to the \$15,435,000 refunding issue and \$61,655 relative to the \$64,900,000 federally taxable issue is hereby approved and authorized; and be it further

2nd **RESOLVED**, this Legislature, being the State Environmental Quality Review Act (SEQRA) Lead Agency, hereby finds and determines that the adoption of this law is a Type II action pursuant to Title 6 NYCRR Section 617.5(c) (20) and (27) since it constitutes a local legislative decision in connection with routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment. As a Type II action, the Legislature has no further responsibilities under SEQRA.

DATED: March 2, 2010

APPROVED BY:

/s/ Steve Levy
County Executive of Suffolk County

Date: March 12, 2010