

RESOLUTION NO. 2021-03

A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH BAKER TILLY MUNICIPAL ADVISORS, LLC.

WHEREAS, it is the desire of the Lorain Port Authority to promote and develop economic projects within the City of Lorain and on the waterfront; and

WHEREAS, it is necessary to hire a consultant to assist the Port in reviewing potential projects, preparing financial analysis, proposing recommendations, and assisting in securing funding for said projects, and

WHEREAS, the Lorain Port Authority has determined that Baker Tilly Municipal Advisors, LLC has been an exceptional partner to us over the past two years working together and is the appropriate fit to continue assisting the Lorain Port Authority in executing the Strategic Plan.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Lorain Port Authority:

SECTION I. It is in the best interest of the Lorain Port Authority to enhance its economic development capability through the hiring of a professional consultant.

SECTION II. The Lorain Port Authority hereby authorizes an agreement with Baker Tilly Municipal Advisors, LLC to provide said services in the amount of \$1,250.00 per month or a total of \$15,000.00 per year.

SECTION III. Said Agreement shall commence March 1st, for a term of three years and this arrangement can be terminated by either party at any point with notice, as outlined in the attached agreement

SECTION IV. It is found and determined that all formal proceedings and actions of this Board concerning and relating to the passage of this resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal Requirements, including Section 121.22, of the Ohio Revised Code.

Ayes: 9

Nays: 0

Abstain: 0

Adopted: 02/09/2021



Carl Nielsen, Vice Chairman



Tom Brown, Executive Director

February 4, 2021

Ms. Tiffany McClelland
Director
Lorain Port Authority
319 Black River Lane
Lorain, Ohio 44052

Baker Tilly Municipal Advisors, LLC
175 South Third St., Ste 1250
Columbus, OH 43215

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bakertilly.com

Re: Engagement Letter and Master Advisory Agreement

Dear Ms. McClelland:

Baker Tilly Municipal Advisors, LLC (Baker Tilly or the Firm) is pleased to provide the Lorain Port Authority (the Authority) with an engagement letter to serve as the Authority's Independent Registered Municipal Advisor (IRMA) and, as such, provide municipal advisory services to the Authority. This engagement letter sets forth the general terms of the Authority's relationship with Baker Tilly and, upon acceptance, will serve as the Master Advisory Agreement (Master Agreement) between the parties. It is contemplated that from time to time this Master Agreement may be supplemented by one or more Supplemental Advisory Agreements (Supplemental Agreement) outlining the specific scope of services and fees related to a particular financing or project.

Representation and Term of Engagement

Upon acceptance of this engagement letter, the terms and conditions contained herein will serve as the Master Agreement governing the municipal advisory relationship between the Authority and the Firm. Accordingly, the Authority may represent to underwriters and providers of financial products that Baker Tilly is the Authority's IRMA. This agreement will remain in effect for a period of three (3) years, beginning March 1, 2021, unless otherwise terminated.

Fees and Costs

Fees charged for work performed are generally based on a fixed amount, hourly rates for the time expended (as set forth in Exhibit B), or other arrangement as mutually agreed upon as more appropriate for a particular matter. Hourly rates for work performed by our professionals vary by individual and reflect the complexity of the engagement. The fees charged for a particular financing or project will be based on the services to be provided and will be outlined in Exhibit B of the Supplemental Agreement between the parties.

Disclosure of Conflicts of Interest with Various Forms of Compensation

The Municipal Securities Rulemaking Board (MSRB) requires us, as your municipal advisor, to provide written disclosure to you about the actual or potential conflicts of interest presented by various forms of compensation. Exhibit C sets forth the potential conflicts of interest associated with various forms of compensation. By signing this letter of engagement, the signee acknowledges that he/she has received Exhibit C and that he/she has been given the opportunity to raise questions and discuss the matters contained within the exhibit with the municipal advisor.

Billing Procedures

Normally, you will receive an invoice at the conclusion of a financing or a monthly statement showing fees and costs incurred in the prior month. Occasionally, we may bill on a less frequent basis if the time involved in the prior month was minimal or if arrangements are made for the payment of fees from bond proceeds. The account balance is due and payable on receipt of the statement.

Once our representation has been concluded or terminated, a final billing will be sent to you. If requested to provide an estimate of our fees for a given matter, we will endeavor in good faith to provide our best estimate, but unless there is a mutual agreement to a fixed fee, the actual fees incurred on any project may be less than or exceed the estimate. Any questions or errors in any fee statement should be brought to our attention in writing within sixty (60) days of the billing date.

Termination

Both the Authority and the Firm have the right to terminate the engagement at any time after reasonable advance written notice. On termination, all fees and charges incurred prior to termination shall be paid promptly. Unless otherwise agreed to by the Authority and the Firm, or as detailed in a Supplemental Agreement, the scope of services provided in Exhibit A will terminate sixty (60) days after completion of the services.

Accountants' Opinion

In performing our engagement, we will be relying on the accuracy and reliability of information provided by Authority personnel. The services provided may include financial advisory services, consulting services, and accounting report services such as compilation, preparation, and agreed upon procedures reports. Please see Exhibit A scope of services. We will not audit, review, or examine the information. Please also note that our engagement cannot be relied on to disclose errors, fraud, or other illegal acts that may exist. However, we will inform you of any material errors and any evidence or information that comes to our attention during the performance of our procedures that fraud may have occurred. In addition, we will report to you any evidence or information that comes to our attention during the performance of our procedures regarding illegal acts that may have occurred, unless they are clearly inconsequential. We have no responsibility to identify and communicate significant deficiencies or material weaknesses in your internal control as part of this engagement.

The procedures we perform in our engagement will be heavily influenced by the representations that we receive from Authority personnel. Accordingly, false representations could cause material errors to go undetected. The responsibility for auditing the records of the Authority rests with the auditor and the work performed by the Firm shall not include an audit or review of the records or the expression of an opinion on financial data.

Client Responsibilities

It is understood that the Firm will serve in an advisory capacity with the Authority. The Authority is responsible for management decisions and functions, and for designating an individual with suitable skill, knowledge or experience to oversee the services we provide. The Authority is responsible for evaluating adequacy and results of the services performed and accepting responsibility for such services. The Authority is responsible for establishing and maintaining internal controls, including monitoring ongoing activities.

Scope of Services

Exhibit A sets forth the general scope of the services to be provided by Baker Tilly under this Master Agreement. From time to time, the Authority may request the Firm's services with regard to specific financings or projects. If this occurs, Baker Tilly and the Authority shall enter into a Supplemental Agreement that sets forth the services to be provided and the fees to be charged, as detailed in Exhibits A and B in the Supplemental Agreement.

E-Verify Program

The Firm participates in the E-Verify program. For the purpose of this paragraph, the E-Verify program means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.401(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). The Firm does not employ any “unauthorized aliens” as that term is defined in 8 U.S.C. 1324a(h)(3).

Municipal Advisor Registration and Responsibilities

Baker Tilly is a municipal advisor registered with the Securities and Exchange Commission (SEC) and the MSRB. As such, Baker Tilly will provide certain specific municipal advisory services to the Authority. The Firm is neither a placement agent to the Authority nor a broker/dealer.

The offer, sale and execution of any Authority bonds or notes shall be made by the Authority, in the sole discretion of the Authority, and under its control and supervision. The Authority agrees that the Firm does not undertake to sell or place, or attempt to sell or place bonds or notes, but shall provide advice and recommendations regarding the sale of such bonds or notes.

As municipal advisor to the Authority, the Firm will have a duty of care and loyalty to the Authority as well as a fiduciary duty to the Authority.

Mediation Provision

The Authority and the Firm agree that if any dispute (other than our efforts to collect any outstanding invoice(s)) arises out of or relates to this engagement, or any prior engagement we may have performed for you, and if the dispute cannot be settled through informal negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures (or such other administrator or rules as the parties may mutually agree) before resorting to litigation. The parties agree to engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement.

Any mediation initiated as a result of this engagement shall take place in Columbus, Ohio, or such other location as the parties may mutually agree. If the parties are unable to mutually agree on the selection of a mediator, the mediator shall be determined in accordance with the American Arbitration Association’s Commercial Mediation Procedures. The results of any such mediation shall be binding only upon a written settlement agreement executed by each party to be bound. Each party shall bear its own costs and fees, including attorneys’ fees and expenses, in connection with the mediation. The costs of the mediation, including without limitation the mediator’s fees and expenses, shall be shared equally by the participating parties. Any ensuing litigation shall be initiated and maintained exclusively before any state or federal court having appropriate subject matter jurisdiction located in Columbus, Ohio.

Other Financial Industry Activities and Affiliations

Baker Tilly Investment Services, LLC (BTIS) is an affiliate of the Firm. BTIS is registered as an investment adviser with the SEC under the federal Investment Advisers Act. BTIS provides non-discretionary investment advice with the purpose of helping clients create and maintain a disciplined approach to investing their funds prudently and effectively. BTIS may provide advisory services to the clients of Baker Tilly.

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BTIS has no other activities or arrangements that are material to its advisory business or its clients with a related person who is a broker-dealer, an investment company, other investment adviser or financial planner, bank, law firm or other financial entity.

If the foregoing accurately represents the basis upon which we may provide advisory services to the Authority, we ask that you execute this document, in the space provided below setting forth your agreement. Execution of this Master Agreement can be performed in counterparts, each of which will be deemed an original and all of which together will constitute the same document.

If you have any questions, please let us know.

Very truly yours,

BAKER TILLY MUNICIPAL ADVISORS, LLC

By: 

Brian S. Cooper, Director

The undersigned hereby acknowledges and agrees to the foregoing letter of engagement.

Lorain Port Authority

Date: _____

By: _____

Printed: _____

EXHIBIT A: GENERAL SCOPE OF SERVICES

At the request of the Authority, Baker Tilly will provide the following general municipal advisory services. Services related to a specific financing or project will be outlined in a Supplemental Agreement.

- Understand the goals and objectives of the client as they pertain to its financing programs, economic development incentives and cooperative agreements.
- Review existing programs and provide support related to the enhancement of existing programs and development of new programs.
- Advise on appropriate program guidelines, underwriting criteria, application process, approval and funding process for the client's various economic development projects.
- Assist with the development and negotiation of existing and new economic development agreements with other political subdivisions.
- Analyze financial and other information regarding potential economic development projects or programs.
- Identify appropriate incentives, financing options and/or mechanisms that are available and appropriate for potential projects including State of Ohio, municipal and local incentive loans and grants.
- Develop a funding strategy for various aspects of the project related to the incentives identified.
- Develop financial pro-formas, number runs and projections regarding various tax incentives that may be generated to support funding of the project including TIF schedules (sales tax revenue schedules or community authority revenue schedules).
- Assist the client in understanding the financial impact of the various abatement and TIF scenarios.
- Assist the client in negotiating and finalizing development agreements or cooperative agreements.
- Attend meetings on behalf of the client and represent the client when discussing or negotiating the transaction with members of the working group.

Additional Services

At the request of the Authority, the Firm may serve as municipal advisor to the client on certain conduit bond issues and capital lease projects or TIF administration services. Such engagements will be subject to a supplemental engagement letter with a specific scope of service and related fees.

Exclusions on Scope of Services

This engagement does not include services related to annual continuing disclosure reporting, administrative or consultant reports related to prior Authority bond issuances or ongoing reporting requirements of the client. Any such services shall be covered by a supplemental agreement.

Fees charged for work performed in relation to debt issuances are generally based on a fixed amount. Our proposed fees for municipal advisory services related to the issuance of bonds is dependent on the type of security being issued, the method of sale and final scope of service approved by the Authority and Baker Tilly. Fees charged for work performed related to debt issuances are expected (but not required) to be paid from transaction proceeds.

Other arrangements, as mutually agreed upon, may be established based upon the nature of the engagement and time expended, in which case hourly rates or a different fixed fee may be more appropriate.

EXHIBIT B: FEES AND EXPENSES

Term: The initial term of this engagement shall be three years, commencing March 1, 2021 through February 29, 2024. The engagement will remain effective after the initial three-year period and both the Authority and the Firm have the right to terminate the engagement at any time after 10 days advance written notice. Upon termination, all fees and charges incurred prior to termination shall be paid promptly.

For the advisory services provided hereunder, the Firm shall receive the following compensation:

Advisory Fee - The Advisory Fee shall equal \$15,000 per year and is payable monthly. The first installment of \$1,250 is payable commencing March 1, 2021 and monthly thereafter so long as the engagement remains in effect. The total Advisory Fee for calendar year 2021 is expected to be \$12,500 (March through December).

At the request of the Authority, the Firm may also provide the following municipal advisory services. Below are a range of estimated fees, which are dependent on the size and complexity of the transaction.

Conduit Bond Closing Fee - The anticipated range of fees for municipal advisory services related to a conduit revenue bond are \$20,000 to \$45,000 depending on the size, scope and credit of the issuance and are typically paid from bond proceeds by the borrower. Such engagements will be subject to a supplemental engagement letter with a specific scope of service and related fees.

Capital Lease Project Closing Fee - The anticipated range of fees for municipal advisory services related to a capital lease financing are \$20,000 to \$30,000 depending on the size, scope and credit of the issuance and are typically paid from bond proceeds by the borrower. Such engagements will be subject to a supplemental engagement letter with a specific scope of service and related fees.

TIF Management - The anticipated range of fees for TIF management services depend on the size, term and history of the TIF district. The customary range of fees for annual TIF management services ranges from \$5,000 to \$10,000 per year.

The above fees shall include all expenses incurred by the Firm with the exception of expenses incurred for travel. No such expenses will be incurred without the prior authorization of the Authority. The fees do not include the charges of other entities such as rating agencies, bond and official statement printers, couriers, newspapers, bond insurance companies, bond counsel and local counsel, and electronic bidding services, including Parity®.

EXHIBIT C: DISCLOSURE STATEMENT OF MUNICIPAL ADVISOR

PART A – Disclosures of Conflicts of Interest

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. If no such material conflicts of interest are known to exist based on the exercise of reasonable diligence by the municipal advisor, municipal advisors are required to provide a written statement to that effect.

Material Conflicts of Interest – The Firm makes the disclosures set forth below with respect to material conflicts of interest in connection with the Scope of Services under this Agreement, together with explanations of how the Firm addresses or intends to manage or mitigate each conflict.

General Mitigations – As general mitigations of the Firm's conflicts, with respect to all of the conflicts disclosed below, the Firm mitigates such conflicts through its adherence to its fiduciary duty to the Client, which includes a duty of loyalty to the Client in performing all municipal advisory activities for the Client. This duty of loyalty obligates the Firm to deal honestly and with the utmost good faith with the Client and to act in the Client's best interests without regard to the Firm's financial or other interests. The disclosures below describe, as applicable, any additional mitigations that may be relevant with respect to any specific conflict disclosed below.

- I. **Compensation-Based Conflicts.** The fees due under this type of agreement are in a fixed amount established at the outset of the Agreement. The amount is usually based upon an analysis by the Client and the Firm of, among other things, the expected duration and complexity of the transaction and the Scope of Services to be performed by the Firm. This form of compensation presents a potential conflict of interest because, if the transaction requires more work than originally contemplated, the Firm may suffer a loss. Thus, the Firm may recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives. This conflict of interest is mitigated by the general mitigations described above.
- II. **Other Municipal Advisor Relationships.** The Firm serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of the Client. For example, the Firm serves as municipal advisor to other municipal advisory clients and, in such cases, owes a regulatory duty to such other clients just as it does to the Client under this Agreement. These other clients may, from time to time and depending on the specific circumstances, have competing interests, such as accessing the new issue market with the most advantageous timing and with limited competition at the time of the offering. In acting in the interests of its various clients, the Firm could potentially face a conflict of interest arising from these competing client interests. This conflict of interest is mitigated by the general mitigations described above.

PART B – Disclosures of Information Regarding Legal Events and Disciplinary History

MSRB Rule G-42 requires that municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to its client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

Accordingly, the Firm sets out below required disclosures and related information in connection with such disclosures.

- I. **Material Legal or Disciplinary Event.** There are no legal or disciplinary events that are material to the Client's evaluation of the Firm or the integrity of the Firm's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I filed with the SEC.

- II. **How to Access Form MA and Form MA-I Filings.** The Firm's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at <http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001616995>.
- III. **Most Recent Change in Legal or Disciplinary Event Disclosure.** The Firm has not made any material legal or disciplinary event disclosures on Form MA or any Form MA-I filed with the SEC.

PART C – Future Supplemental Disclosures

As required by MSRB Rule G-42, this Disclosure Statement may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of the Firm. The Firm will provide the Client with any such supplement or amendment as it becomes available throughout the term of the Agreement.

PART D – Rule G-10: Investor and Municipal Advisory Client Education and Protection

MSRB Rule G-10 requires that municipal advisors to notify their clients of the availability of a client brochure on the MSRB's website that provides information on the processes for filing a client complaint.

Accordingly, the Firm sets out below the required information.

- I. The Firm is registered as a Municipal Advisor with the Securities and Exchange Commission (867-00880) and the Municipal Securities Rulemaking Board (K1027).
- I. The website address for the Municipal Securities Rulemaking Board is www.msrb.org.
- II. The website for the Municipal Securities Rulemaking Board has a link to a brochure that describes (i) the protections that may be provided by the Municipal Securities Rulemaking Board rules and (ii) describes how to file a complaint with an appropriate regulatory authority.