

Introduced by: City Manager Nathan Mai-Lombardo

AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH STIFEL, NICOLAUS & COMPANY, INC. FOR FINANCIAL ADVISORY SERVICES

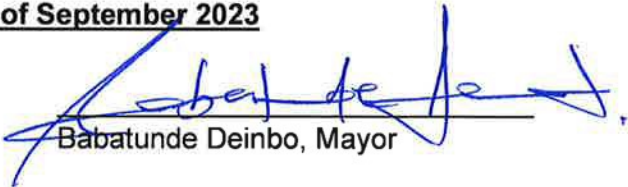
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:

- Section 1.** The City Council of the City of Berkeley hereby authorizes the City Manager to enter into and execute the attached agreement with Stifel, Nicolaus & Company, Incorporation to provide Financial Advisory Services in regards to General Orders Bonds.
- Section 2.** The attached agreement is hereby incorporated herein and made a part of this ordinance, as if fully set out herein.
- Section 3.** This Ordinance shall be in full force and effect from and after the date of its passage.

1st Reading this 21st day of August 2023


2nd Reading this 18th day of September 2023

3rd Reading, PASSED and APPROVED, this 18th day of September 2023

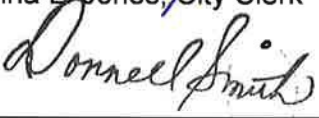


Babatunde Deinbo, Mayor

ATTEST:



 Deanna L. Jones, City Clerk



 Donnell Smith, City Attorney

Final Roll Call:

Councilwoman Verges	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Councilwoman Williams	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Councilman Hoskins	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Councilwoman Anthony	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Councilman Hindeleh	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Councilwoman-at-Large Crawford-Graham	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Mayor Deinbo	Aye <u>X</u> Nay ___ Absent ___ Abstain ___

Approved as to Form:
Donnell Smith, City Attorney

August 2, 2023

Mr. Nathan Mai-Lombardo, City Manager
Mr. Torenzo Ford, Finance Director
City of Berkeley
8425 Airport Rd
Berkeley, MO 63134

RE: FINANCIAL ADVISORY SERVICES
General Obligation Bonds

Stifel, Nicolaus & Company, Incorporated ("Stifel") presents for your acceptance this agreement to retain Stifel as financial advisor to the City of Berkeley, Missouri ("Issuer") for the proposed General Obligation Bonds to be voted at an election in or prior to 2025 estimated to be issued in the aggregate principal amount of approximately \$2,725,000 (the "Voted Bonds") and the General Obligation Refunding Bonds for the purpose of refunding Issuer's Series 2015 General Obligation Bonds should savings levels be satisfactory (the "Refunding Bonds" and together with the Voted Bonds, the "Bonds"). Stifel may assist on the cash prepayment of outstanding Series 2015 General Obligation Bonds prior to maturity under the scope of this agreement. This agreement will be effective on the date signed by an authorized representative of Issuer and will authorize Stifel to act as financial advisor through the completed sale of the proposed Bonds, at which time this agreement will terminate. This agreement may also be terminated on thirty (30) days written notice by either party.

1. Scope of Work. Stifel agrees to perform the following services for Issuer with respect to the Bonds:
 - a. Assume overall responsibility for the financial analysis and structuring recommendations for the Bonds;
 - b. Assist disclosure counsel and Issuer in preparation of the preliminary and final official statements, offering memoranda, or term sheets for the Bonds consistent with all federal and state requirements;
 - c. Coordinate with consultants, accountants, bond counsel, other attorneys and staff in connection with the sale of the Bonds;
 - d. Coordinate financing time schedule, distribution of documents, preliminary and final official statement printing, wire-transfer of funds, delivery of bonds and bond closing;
 - e. Assist Issuer on the matter of bond rating(s) for the proposed issue and coordinate the preparation of credit information for submission and presentation to the rating agency(ies);

- f. Coordinate pre-pricing discussions of bond pricing and structuring, supervise the competitive sale process, and advise on acceptability of offer to purchase bonds by the winning bidder;
 - g. If requested, assist Issuer in procuring any appropriate ancillary financing-related products and services including, credit enhancement (e.g., bond insurance), paying agent/registrar/trustee, escrow agent (if applicable), escrow investments, and other such products and services as Issuer may deem necessary or desirable in connection with any financing;
 - h. Attend Issuer meetings as requested, with reasonable advance notice;
 - i. Monitor Issuer's outstanding Series 2015 General Obligation Bonds for refinancing opportunities;
 - j. Assist with the cash prepayment of outstanding Series 2015 General Obligation Bonds as directed by the Issuer; and
 - k. Provide such other services as are mutually agreed upon in writing by Issuer and Stifel.
2. Issuer's Obligations. Issuer agrees that, with respect to the Bonds, its staff and consultants will cooperate with Stifel and make available any data in the possession of Issuer necessary to perform Stifel's financial advisory services and regulatory obligations as described in Exhibit A to this agreement.
3. Regulatory Disclosures:
- a. Issuer 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 -"the Rule"). Stifel will be serving as a municipal advisor to the Issuer under the Rule and this agreement documents the municipal advisory relationship between Stifel and the Issuer.
 - 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.
4. Compensation:


For Stifel's financial advisory services and expenses in processing the Voted Bonds, Stifel shall be paid a fee equal to \$40,000 to be paid at the completion of the sale of the Voted Bonds. For Stifel's financial advisory services and expenses in processing the Refunding Bonds, Stifel shall be paid a fee equal to \$17,500 to be paid at completion of the sale of the Refunding Bonds. Such amounts includes all out of pocket expenses. Stifel will not charge any fee for assistance with the cash prepayment of outstanding Series 2015 General Obligation Bonds.

5. Authority to Direct Financial Advisor:

The following individuals have the authority to direct Stifel's performance of its scope of work under this agreement: Mr. Nathan Mai-Lombardo, City Manager and Mr. Torenzo Ford, Finance Director.

Respectfully submitted this 1st day of August.

STIFEL, NICOLAUS & COMPANY, INCORPORATED

By: 

Name: Martin J. Ghafouri

Title: Managing Director

ACCEPTANCE

I, Nathan Mai-Lombardo, upon approval by the governing body of The City of Berkeley, MO, hereby accept the agreement as submitted by Stifel, Nicolaus & Company, Incorporated relative to the financial advisory services, as described herein.

By: 

Name: Nathan Mai-Lombardo

Title: City Manager

Date: _____

EXHIBIT A

City of Berkeley, Missouri General Obligation Bonds

MSRB Rule G-42 Disclosures

As municipal advisor to the City of Berkeley, Missouri (“you”), Stifel Nicolaus (“Stifel” or “we”) is subject to the rules of the Municipal Securities Rulemaking Board (MSRB), including MSRB Rule G-42. The rule directs 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. 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-1 for each of its employees who is engaged in municipal advisory activities. Stifel's most recent Form MA and the Form MA-1 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: <https://adviserinfo.sec.gov/firm/summary/793>. Item 6 of each Form MA-1 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/>.

On April 28, 2023, Stifel, Nicolaus & Company, Incorporated ("Stifel") entered into a Consent Order (the "Order") with the Enforcement Section of the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (the "Enforcement Section" and the "Division," respectively). In the Order, the Division stated that Stifel failed to supervise its agents as follows: (1) Stifel did not reasonably supervise a Massachusetts registered agent's trading in customer accounts; (2) Stifel did not reasonably monitor use of off-channel electronic devices by agents to conduct Stifel business; and (3) Stifel did not reasonably review and approve retail communications prior to distribution.

Stifel was censured and ordered to pay a monetary fine of \$2,500,000. In addition to the administrative fine, Stifel was ordered to make restitution payments to certain customers in an amount not less than \$712,612.58. Stifel admitted to the Division's statement of facts set forth in the Order, but neither admitted nor denied the alleged violation of law set forth in the Order (regarding supervision).

Stifel does not consider this matter to be material to our ability to perform municipal advisory services for our clients.

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.

Additional Information

We also wish to inform you that Stifel is registered as a municipal advisor with both the SEC and the MSRB. Information about the duties of a municipal advisor, as well as the procedures for filing a complaint, may be found on the MSRB's website by clicking on the following link: <http://www.msrb.org/~media/Files/Resources/MSRB-MA-Clients-Brochure.ashx?la=en>. The general website for the MSRB is www.msrb.org. If you have any questions, please contact your municipal advisor.