

RESOLUTION NO. 61-19
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Seve ON THE 16th DAY
OF September, 2019.

**RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
AN ENGAGEMENT LETTER AGREEMENT FOR MUNICIPAL
ADVISORY SERVICES WITH BRADLEY PAYNE LLC.**

WHEREAS, the City of Centerville has a need for municipal advisory professional services to assist with advise on all financing related proposals, ideas and concepts submitted to the City of Centerville by financial services companies; and

WHEREAS, Bradley Payne, LLC has unique knowledge and experience in the area of municipal financial services for municipal governments and has demonstrated an ability to assist in accomplishing the objectives of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE
CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, AS FOLLOWS:**

Section 1. The City hereby agrees to enter into a Engagement Letter Agreement with Bradley Payne, LLC; and the City Manager is hereby authorized to execute the Engagement Letter Agreement with Bradley Payne, LLC in a form substantially similar to the Agreement attached hereto as Exhibit "A" and incorporated herein on behalf of the City of Centerville.

Section 2. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 16th day of September, 2019.



Mayor of the City of
Centerville, Ohio

ATTEST:

Carin R. Andrew

Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 61-19, passed by the Council of the City of Centerville, Ohio on the 16th day of September, 2019.

Carin R. Andrew

Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney



Andrew J. Brossart
Bradley Payne Advisors
11260 Chester Road, Suite 375
Cincinnati, Ohio 45246
513.772.5596

August 14, 2019

Mr. Wayne Davis
City Manager
City of Centerville
100 W. Spring Valley Road
Centerville, Ohio 45458

RE: Engagement Letter –Related to City of Centerville Municipal Advisory Services

Dear Mr. Davis:

Section 1 of this letter describes the municipal advisor professional services engagement between Bradley Payne Advisors and the City of Centerville. Section 2 describes Andrew Brossart’s services and fees as they relate specifically to the City’s Municipal Advisory Services. Upon agreeing with the intentions of this letter, please sign and return a copy to me electronically.

Please note: Section 2 of this letter contains important disclosures.

Abbreviations:

Bradley Payne LLC and the City of Centerville are abbreviated from time to time herein as “BP” and “City” respectively.

SECTION 1 – GENERAL SERVICES

Municipal Advisory Activities That May Be Provided at the Specific Request of the City:

General Services:

- a) Offer advice on all financing related proposals, ideas and concepts submitted to the City by financial services companies;
- b) Prepare or review investment, disclosure and debt policies;
- c) Manage the development and distribution of Request for Qualifications related to financing professional services;
- d) Meet with the City’s financial planning team and assist with the formulation of financing plans and other bond related matters. Develop and distribute communications related to team discussions.

Transaction Specific Services Provided:

- a) Produce and distribute schedules, distribution lists and other working papers, such as plan of finance and pricing summaries;
- b) Organize and facilitate the following activities: rating presentation and securities pricings;
- c) Prepare progress reports;
- d) Facilitate the City's full and accurate investor disclosures and assist in the retention of a suitable disclosure agent. *(This service is limited in scope to making a "best effort" review of the information made available to BP and in no way by delivery assumes accuracy or any responsibility or role as Disclosure Agent);*
- e) Assist with the bond underwriter's post-sale review including comparisons to comparable transactions;
- f) Review post-pricing-day market trades in the City's Bonds including Bonds trading out of the primary account and in the secondary market for a period of approximately two to three weeks to reveal unusual or unfair pricing events.

Development Transaction Specific Services Provided:

Assisting in the development and review of new development and/or redevelopment projects including:

- a) Review and/or Produce projections of tax revenue increases.
- b) Review of any financing plan utilizing increased tax revenues from the proposed development and marketability of those revenue streams.
- c) At the request of the client, review all documents where by the Client is financially involved.
- d) Assist the client in locating and reviewing all sources available by law to help finance or operate the proposed facility.

Compensation and Out-of-Pocket Expenses:

BP expects to provide general "municipal advisory services" to the City from time to time at the City's request. Unless otherwise stipulated by separate agreement, fees for occasional financial advice are \$0.00.

BP will provide specific "transaction services" under this agreement per Section 2 below.

Record Retention:

Effective July 1, 2014, pursuant to the Securities and Exchange Commission (SEC) record retention regulations, BP is required to maintain in writing all communication and documentation between BP and the City for five (5) years.

Fiduciary Duty:

BP is registered as a Municipal Advisor with the SEC and Municipal Securities Rulemaking Board (MSRB). As such, under MSRB Rule G-42, BP has a fiduciary duty to the City and must provide both duty of care and loyalty that entails several proscribed duties including but not limited to the following:

- a) Exercise due care in performing its municipal advisory activities;

- b) Possess the degree of knowledge and expertise needed to provide the City with informed advice;
- c) Make a reasonable inquiry as to the facts that are relevant to the City's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the City; and
- d) Undertake a reasonable investigation to determine that BP is not forming any recommendation on materially inaccurate or incomplete information; BP must have a reasonable basis for:
 - i) any advice provided to or on behalf of the City;
 - ii) any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the City, any other party involved in the municipal securities transaction or municipal financial product, or the City's securities; and
 - iii) any information provided to the City or other parties involved in the municipal securities transaction when participating in the preparation of an official statement.
- e) BP must deal honestly and with the utmost good faith with the City and act in the City's best interests without regard to the financial or other interests of BP.

*(For MSRB's Regulatory Notice and description for G-42 duties, please see:
<http://www.msrb.org/~media/Files/Regulatory-Notices/Announcements/2016-03.ashx?la=en>)*

Term of Engagement:

The City has the right to terminate its relationship with BP at any time. In that event, City agrees that BP is owed just and equitable compensation for any satisfactory "transaction services" completed up to that point, including all pre-financing services, and as presented in a final invoice.

Assignment:

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Disclosures:

BP is required to disclose to the City any conflicts of interest that may interfere with, or be perceived to interfere with, its fiduciary duty to the City. Disclosures for this purpose are provided in the Section 2 of this letter below and may be amended from time at the request and approval of the parties to this Agreement.

License and Registration:

Andrew Brossart is a licensed Municipal Advisor. The City may verify Andrew Brossart's SEC registration status at: <http://www.sec.gov/edgar/searchedgar/companysearch.html>.

The City may also review Andrew Brossart's recent engagements and political contributions by calendar year quarter at: <http://emma.msrb.org/MarketActivity/PoliticalContributions.aspx>.

Pursuant to Municipal Securities Rulemaking Board ("MSRB") Rule G-42, on Duties of Municipal Advisors, and Rule G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to

provide certain written information to their municipal entity and obligated person clients which include the following:

- a) BP is currently registered as a Municipal Advisor with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board.
- b) Within the Municipal Securities Rulemaking Board (“MSRB”) website at www.msrb.org, the City may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

SECTION 2 – TRANSACTION FEES AND DISCLOSURES

Transactions: The City plans to issue Bonds and Notes at various times within the timeframe of this engagement. The known planned offerings are as follows:

- a) Public Improvements Financing(s);
- b) Long-term Bond Financings Needed by the City;
- c) Short-term Note Financings Needed by the City;
- d) Future financings need by the City.

BP Transaction Fees: BP’s fees for services, which compensate BP for advisory services related to the City’s contemplated financing needs plus any out of state travel, are set forth below. All fees are contingent* upon the successful closing of the transactions, with the exception provided in Section 1 herein under “*Term of Engagement*” and have a minimum fee of \$10,000. Expenses for out-of-state travel will be added to the bond fees listed below:

- i) Negotiated Sale Limited Tax General Obligation BANs – 0.1% of Par amount issued.
- ii) Competitive Sale Limited Tax General Obligation BANs – 0.15% of Par amount issued.
- iii) Negotiated Sale Limited Tax General Obligation Bonds – 0.45% of Par amount issued.
- iv) Competitive Sale Limited Tax General Obligation Bonds – 0.475% of Par amount issued.
- v) Negotiated Sale Income Tax, Not Tax Revenue or Utility Revenue Obligation Bonds – 0.475% of Par amount issued.
- vi) Competitive Sale Income Tax, Not Tax Revenue or Utility Revenue Obligation Bonds – 0.5% of Par amount issued.
- vii) Bank Placements of for LTGO, Utility, Income Tax or Non-Tax Revenue Obligation – 0.45% of Par amount issued.
- viii) Any unrated and privately placed or public sale economic development bonds and development projects – negotiated separately with the city but expected to be around 0.75% of Par amount issued.

**Please see important disclosures below. Transaction based fees may create conflicts of interest.*

Estimated Aggregate Transaction Fees

BP will provide a review of all proposed and negotiated vendor fees and expenses to the City in advance of any bond and note sale. Upon request, BP's efforts will include collecting and negotiating vendor fees on the City's behalf.

Comparative Transaction Fees

At the City's request, BP will informally review the proposed aggregate transaction fees and the circumstances behind the fees to help prevent "excessive fees" as alluded to by the MSRB's proposed Rule G-42. As part of this review, upon request, BP will compare the total fees for this transaction to the fees reported in the final offering statements of several comparable transactions, considering the unique characteristics of the transactions (this review is limited to comparisons based readily available information from similar transactions).

IMPORTANT DISCLOSURES:

- a) **Compensation** – fees for municipal advisory services are typically provided in one or a combination of the following three ways:
 - i) **Transaction Fees / Hourly Fees / Retainer**
 - ✓ **Transaction "Flat" Fee** – Contingent fees are considered by the clear majority of Ohio issuers to be suitable where hours of pre-sale work may be completed but for a variety of reasons the bond sale may be cancelled prior to execution. Common reasons for cancellation include election failure or adverse market conditions. In the City's case, for example, BP and the underwriter assumed full risk for planning meetings and all related work prior to a possible ballot outcome, thereby protecting the City from general fund liability should the issue fail. Please note: Contingent transaction fees may lead to comparatively higher fees and may conceivably cause financing team professionals to recommend financings not in the best interest of the City to generate additional fee income.
 - ✓ **Hourly Fee and Retainer** - The City has not historically paid fees on a contingency basis from bond funds. Nevertheless, BP encourages open discussion of hourly and retainer fee options at the City's request.
- b) **Affiliations & Conflicts of Interest** - As of the date of this Agreement, there are no affiliations or conflicts of interest that BP is aware of that in its opinion would impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If BP becomes aware of any potential conflicts of interest that arise after this disclosure, BP will disclose the detailed information in writing to the City in a timely manner.

Ballot Levy Contribution – BP has not made any contributions in support of any City's bond issue ballot campaigns.
- c) **Qualifications** - BP possesses the knowledge and expertise and will make a reasonable inquiry as to the facts that are relevant in determining the basis of advice provided and a reasonable investigation to determine that BP is not forming a recommendation on materially inaccurate information. BP is a registered Municipal Advisor in good standing.
- d) **Public Expense** - Fees paid to BP and other financing team members constitute public expense. Fees paid from bond proceeds are generally paid from bond proceeds and ultimately manifest themselves in the

form of slightly higher average interest rates paid over the life of the Bonds. While BP's services are designed to materially lower or minimize the City's overall financing costs through promoting and recommending best execution, they cannot be guaranteed to do so.

- e) **Travel Expenses Borne by the City** – The City may choose to travel out-of-state for the bond rating process and bond pricing. In BP's opinion, traveling for these events enhances the overall success of the City's financings and ultimately leads to the best possible financing outcomes. **PLEASE NOTE:** Transaction related travel expenses are typically paid from bond proceeds (ultimately by the City's taxpayers). As such, travel may be best suited for officials directly involved in the City's leadership and fiscal management and, in some instances for over-lapping government officials. The underwriter, bond counsel or municipal advisor may pay all or portions of these expenses and subsequently submit such expenses for reimbursement in their invoices for services. Federal regulators who oversee advisors and underwriters have shown a preference for such expenses to be paid directly by the City when possible.
- f) **Principal** - BP does not act as principal in any of the transaction(s) related to this Agreement.
- g) **Suitability** – As requested, BP will perform due diligence that will allow it to form a reasonable basis for its recommendations. At the City's request, BP will discuss material risks, potential benefits, structures and other characteristics of recommendations with the City. BP will consider other reasonably feasible alternatives that might also serve the City's objectives.

If the City requests BP to review and evaluate recommendations made by another party, BP will discuss the following points with City:

- i) the evaluation of the material risks, potential benefits, structure and other characteristics of the recommendation;
 - ii) whether BP reasonably believes that the recommendation is suitable and the basis for that belief;
 - iii) whether BP has investigated or considered other reasonably feasible alternatives to the recommendation.
- h) **BAN Risk Disclosure**

From the perspective of risk management and suitability, issuers should be aware that bond anticipation notes (BANs) resemble variable rate debt, particularly when re-issued over multiple years. Please note these pertinent disclosures:

- i) Interest rate risk – short-term interest rates can be volatile from day to day and particularly over longer periods. Issuers may be required to re-issue (roll) BANs in the future at materially higher rates and cost;
- ii) Market access risk – many issuers plan to use bond proceeds to pay-off BANs at some point in the future, thereby locking in long-term funding. While very rare, there have been circumstances in the capital markets where access to the bond market has been unusually restricted. For example, markets may cease to function normally during periods of war, systemic financial crisis, or other national or global calamities. Such an event can expose an issuer to default. Additionally, severe changes in the issuer's credit profile may have a similar impact.
- iii) Fees – rolling BANs, re-issuing them periodically, may create a higher fee and expense profile than issuing fixed rate bonds.

- i) **Legal and Regulatory Disclosures** - As of the date of this letter, BP is aware of no legal disclosures it should make that are material to its relationship with the City. If BP becomes aware of reasonable disclosures that arise during the term of this Agreement, BP will disclose such in writing to the City in a timely manner.
- j) **Liability Insurance** - BP carries professional liability insurance.
- k) **Establishment of Non-Municipal Advisor Firm:**

John Payne and Andrew Brossart, joint owners of Bradley Payne, LLC (“Bradley Payne”) have established a separate and independently functioning non-municipal advisor firm called The Incentive Review Group, LLC (“The Incentive Review Group”). The Incentive Review Group does not provide regulated municipal advisory services as defined by the U.S. Securities and Exchange Commission (“SEC”) and is not registered with the SEC. Bradley Payne is obligated by federal securities law to serve in the capacity of fiduciary to its municipal entity clients whereas The Incentive Review Group is not. Because Bradley Payne and The Incentive Review Group will serve many of the same clients, Bradley Payne could potentially face a conflict of interest while acting in its municipal advisory clients’ best interests. If any such conflict is discovered, it will be promptly disclosed to the client. Bradley Payne believes it effectively manages potential conflicts of interest by always dealing honestly and in good faith with its clients, including a fiduciary duty to its municipal entity clients. Bradley Payne’s role and services are described in detail within this engagement letter.

City of Centerville acknowledges that BP has a potential conflict of interest in engagements where the City may also contract for Incentive Review Group (see IRG herein) services wherein BP’s partnership interest in TIRG could motivate BP to make recommendations not in the client’s best interest in regards to the formation, construction and implementation of the incentive agreement, for example, so as to make the incentive agreement larger and more complex. Notwithstanding this disclosure, BP is committed to the standard that BP and TIRG services will always be conducted in the City’s best interest.

If there are any questions regarding the letter, please do not hesitate to contact me. If you agree, please acknowledge receipt and approval of this letter by signing and returning at your convenience. Thank you.

Sincerely,



Andrew J. Brossart, Partner
Bradley Payne LLC

Approved:

Wayne Davis
City Manager
City of Centerville, Ohio

Date: _____

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions.
Department of Law
Scott A. Liberman
Municipal Attorney