

**BILL NO.:** 4700

**ORDINANCE NO.:** \_\_\_\_\_

**Introduced by: Council Present**

**AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE THE ATTACHED 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 Mayor is hereby authorized to execute the attached agreement with Stifel, Nicolaus & Company, Incorporated for financial advisory services in regard to potential municipal securities transaction for Certificates of Participation, Series 2010B.

**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 its passage.

1st Reading, this 01<sup>st</sup> day of April 2019

2nd Reading this \_\_\_\_\_ day of \_\_\_\_\_ 2019

3rd Reading, PASSED and APPROVED, this \_\_\_\_\_ day of \_\_\_\_\_ 2019

\_\_\_\_\_  
Theodore Hoskins, Mayor

ATTEST:

\_\_\_\_\_  
Deanna L. Jones, City Clerk

\_\_\_\_\_  
Approved As To Form:  
Donnell Smith, City Attorney

Final Roll Call:

|                            |     |     |     |     |        |     |         |     |
|----------------------------|-----|-----|-----|-----|--------|-----|---------|-----|
| Mayor Hoskins              | Aye | ___ | Nay | ___ | Absent | ___ | Abstain | ___ |
| Councilwoman Hoskins       | Aye | ___ | Nay | ___ | Absent | ___ | Abstain | ___ |
| Councilwoman Mitchell      | Aye | ___ | Nay | ___ | Absent | ___ | Abstain | ___ |
| Councilwoman Williams      | Aye | ___ | Nay | ___ | Absent | ___ | Abstain | ___ |
| Councilman-at-Large Greene | Aye | ___ | Nay | ___ | Absent | ___ | Abstain | ___ |
| Councilwoman Hindeleh      | Aye | ___ | Nay | ___ | Absent | ___ | Abstain | ___ |
| Vacant                     | Aye | ___ | Nay | ___ | Absent | ___ | Abstain | ___ |



March 27, 2019

Debra M. Irvin, City Manager  
Keidra King, Finance Director  
City of Berkeley, Missouri  
8425 Airport Rd  
Berkeley, MO 63134

Re: Underwriter Engagement Relating to Potential Municipal Securities Transaction for Certificates of Participation

Dear Ms. Irvin and Ms. King:

The City of Berkeley, Missouri (“Issuer”) and Stifel, Nicolaus & Company, Incorporated (“Stifel”) are entering into this engagement letter to confirm that they are engaged in discussions related to a potential issue of (or series of issuances of) municipal securities related to Refunding Certificates of Participation for the purpose of refunding Issuer’s Taxable Build America Certificates of Participation, Series 2010B should savings levels be satisfactory and Certificates of Participation in the approximate amount of \$7,000,000 to be issued for Issuer’s recreation center project (the “Certificates”), and to formalize Stifel’s role as underwriter with respect to the Issue. This contract is expressly solely for the aforementioned services and no other services are being sought by the Issuer and may be provided pursuant to this agreement.

***Engagement as Underwriter***

Issuer is aware of the “Municipal Advisor Rule” of the Securities and Exchange Commission (“SEC”) and the underwriter exclusion from the definition of “municipal advisor” for a firm serving as an underwriter for a particular issuance of municipal securities. Issuer hereby designates Stifel as an underwriter for the Issue. Issuer expects that Stifel will provide advice to Issuer on the structure, timing, terms and other matters concerning the Issue.

***Limitation of Engagement***

It is Issuer’s intent that Stifel serve as an underwriter for the Issue, subject to satisfying applicable procurement laws or policies, formal approval by the City Council of Issuer, finalizing the structure of the Issue and executing a bond purchase agreement. While Issuer presently engages Stifel as the underwriter for the Issue, this engagement letter is preliminary, nonbinding and may be terminated at any time by Issuer, without penalty or liability for any costs incurred by the underwriter, or Stifel. Furthermore, this engagement letter does not restrict Issuer from entering into the Issue with any other underwriters or selecting an underwriting syndicate that does not include Stifel.

***Disclosures Required by MSRB Rule G-17 Concerning the Role of the Underwriter***

The Issuer hereby confirms and acknowledges each of the following concerning the role that Stifel would have as an underwriter:

- (i) MSRB G-17 requires an underwriter to deal fairly at all times with both municipal issuers and investors.
- (ii) The underwriter's primary role is to purchase the Certificates with a view towards distribution in an arm's-length commercial transaction with the Issuer. The underwriter has financial and other interests that differ from those of the Issuer.
- (iii) Unlike a municipal advisor, the underwriter does not have a fiduciary duty to the Issuer under the federal securities laws and is, therefore, not required to act in the best interests of the Issuer without regard to its own financial or other interests.
- (iv) The underwriter has a duty to purchase the Certificates from the Issuer at a fair and reasonable price, but must balance that duty with its duty to sell the securities to investors at prices that are fair and reasonable.
- (v) The underwriter will review the official statements for the Certificates in accordance with, and as part of, its responsibilities to investors under federal securities laws, as applied to the facts and circumstances of each transaction<sup>1</sup>.

### ***Disclosures Concerning the Underwriter's Compensation***

The underwriter will be compensated by a fee and/or an underwriting discount that will be set forth in the certificate purchase agreement to be negotiated and entered into in connection with the issuance of the Certificates. Payment or receipt of the underwriting fees or discounts will be contingent on the closing of the transactions and the amount of compensation may be based, in whole or in part, on a percentage of the principal amount of the Certificates. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the underwriter may have an incentive to recommend to the Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

### ***Conflicts of Interest Disclosures***

Stifel has not identified any additional potential or actual material conflicts that require disclosure.

### ***Disclosures Relating to Complex Municipal Securities Financing***

Since Stifel has not recommended a "complex municipal securities financing" to Issuer, additional disclosures regarding the financing structure for the Issue are not required under MSRB Rule G-17.

In accordance with the requirements of MSRB Rule G-17, if Stifel recommends, or if the Certificates are ultimately structured in a manner considered a "complex municipal securities financing" to Issuer, this letter will be supplemented to provide disclosure of the material financial characteristics of that financing structure as well as the material financial risks of the financing that are known to us and are reasonably foreseeable at that time.

If you or any other Issuer officials have any questions or concerns about these disclosures, please make those questions or concerns known immediately to the undersigned. In addition, you should consult

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<sup>1</sup> Under federal securities law, an issuer of securities has the primary responsibility for disclosure to investors. The review of the official statement by the underwriter is solely for purposes of satisfying the underwriter's obligations under the federal securities laws and such review should not be construed by an issuer as a guarantee of the accuracy or completeness of the information in the official statement.

with the Issuer's own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent you deem appropriate.

It is our understanding that you have the authority to bind the Issuer by contract with us, and that you are not a party to any conflict of interest relating to the subject transaction. If our understanding is incorrect, please notify the undersigned immediately.

Sincerely,

Stifel, Nicolaus & Company, Incorporated



Martin J. Ghafoori  
Director – Public Finance  
[ghafoorim@stifel.com](mailto:ghafoorim@stifel.com)

Issuer accepts and acknowledges the foregoing.

Accepted and Executed:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_