

HARRIS BEACH PLLC
ATTORNEYS AT LAW

October 29, 2018

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VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

CHARLES I. SCHACHTER

Town Board of the Town of Pendleton
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Lockport, New York 14094
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RE: Proposal to Provide Bond Counsel Services

Dear Members of the Town Board:

Harris Beach is pleased to submit this proposal to provide bond counsel services to the Town of Pendleton, Niagara County, New York (the "Town") in connection with the Town's upcoming financing of the Fisk Road rehabilitation project (the "Project" or the "Matter"). It is our understanding that the cost of the Project is approximately \$900,000 and that to date the Town has not paid any Project costs or issued any debt to fund the Project. This proposal includes a summary of the scope of services we are prepared to provide as Bond Counsel, the fee schedules for these services, and the terms of payment.

Experience

Harris Beach PLLC is a nationally recognized bond "red book" listed bond counsel firm. We serve as bond counsel to municipalities, school Towns, fire districts and state and local agencies throughout New York State. Our Public Finance Department has experience with all types of general obligation bond financings and has worked with most of the underwriters and fiscal advisors who do business with New York State municipalities and school districts.

Services

As Bond Counsel to the Town, we would act as a recognized independent counsel with respect to the authorization of the obligations being issued, and undertake all legal services associated with that responsibility. In particular, we would draft the bond resolution to be adopted by the Town Board of the Town with respect to the Project to authorize the bonds to be issued, and all associated legal notices and certificates. In connection with our preparation of such documents, we would review the proceedings undertaken by the Town under the State Environmental Quality Review Act ("SEQRA") with respect to the Project. We also would work closely with the Town in structuring the financing, provide counsel regarding municipal finance questions raised in connection with the Project and advise as to alternatives available under any particular scenario. Set forth below is a description of the scope of services we would provide.

Resolutions and Associated Proceedings. As Bond Counsel to the Town, we will act as a recognized independent counsel with respect to the authorization of the obligations being issued, and undertake all legal services associated with that responsibility. In particular, we will prepare all resolutions to be adopted by the Board of the Town to authorize the bonds and/or notes to be

issued, and all associated legal notices and certificates. We would also review associated proceedings undertaken by the Town in connection with the Project. We will work closely with the Town in structuring the financing, provide counsel regarding municipal finance questions raised in connection with the financed projects and advise the Town as to alternatives available under any particular scenario.

Bond Anticipation Notes. For each bond anticipation note issue for the Project, we would prepare or review, as appropriate, the Notice of Sale, if any, for the financing and if an Official Statement is published for such transaction, we would assist in the preparation of such document by reviewing those sections describing the notes, the Project being financed, and the legality and tax exempt status of the notes. For the closing on the notes, we would prepare all of the necessary documentation, including the certificate of determination or authorizing resolution, as appropriate, the note, the arbitrage and tax certificates, the material events disclosure agreement, if required, and all other certificates and documents customarily provided in this type of transaction. We would also file the necessary information return with the Internal Revenue Service. Finally, we would render our approving opinion regarding the validity, enforceability and tax exempt status of the notes.

Serial Bonds or Statutory Installment Bonds. In the event the Town subsequently decides to issue bonds for the Project, for each serial bond transaction or statutory installment bond issue, we expect to be primarily responsible for the preparation of the notice of sale for the bond issue. For the closing on the bond issue, we would prepare all the necessary documentation, including the certificate of determination, the form of bond, the tax and arbitrage certificate, the continuing disclosure agreement, if required, and all other certificates and documents customarily provided for a bond financing. For bonds secured by a municipal bond insurance policy, we would coordinate with the bond insurer to ensure satisfaction of all the requirements for the delivery and release of their policy, and all associated documents and opinions. We would also arrange for the delivery of the bonds to the purchaser (or if the bonds are in book entry form, to the depository for the bonds) and file the necessary information return (Form 8038-G) with the Internal Revenue Service. Finally, we would render our approving bond counsel opinion regarding the validity, enforceability and tax exempt status of the bonds, and any supplemental opinions necessary.

Please note that in connection with each bond and note transaction, we do not anticipate that we will be primarily responsible for the preparation of either the official statement (or other disclosure document) or any debt statement prepared and filed in accordance with New York Law. Given that the proposed financing is for less than \$1,000,000, it is our assumption that neither an official statement nor a debt statement will be required. However, in the event the Town has determined to prepare an official statement or a debt statement, it is our assumption that these documents will be prepared either by the Town or by its fiscal advisor, as is customarily the case. We will, however, review these documents and comment, as necessary, to ensure that the Town has complied with all applicable disclosure and filing requirements in connection with the bond issue.

Tax Diligence and Advice. In connection with the contemplated bond financing, we will conduct a tax analysis to confirm that the bond anticipation notes or bonds, as applicable, are eligible to be issued on a tax-exempt basis. Such tax review will also take into account the expected use of the project being finance, as well as the other sources of funds available to pay a portion of the project costs.

Following the issuance of bonds for the Project, and so long as such indebtedness remains outstanding, we would counsel the Town, as needed, with respect to its ongoing obligations to comply with the Federal tax law requirements applicable to tax-exempt obligations.

Should you request our assistance with respect to another matter, the scope of that engagement, the services we will provide, and any other relevant information will be the subject of a separate written acknowledgment (which may be communicated by email) by the Firm and the Town that relates specifically to such other matter, but which may incorporate the other terms of this letter of engagement by reference.

Except as we may otherwise both agree in writing, you agree that we may disclose the fact of our representation of you, including in materials that the Firm uses to describe its practices and expertise.

Firm Personnel; Principal Contact

Charles Schachter will be responsible for the supervision of the Matter, but the Town is engaging the Firm as a whole and not any individual attorney. He can be reached at (585) 419-8633; cschachter@harrisbeach.com. As necessary or appropriate, the Firm will draw upon the talents and experience of other Firm attorneys, professionals, and staff in providing services relating to the Matter.

Fees and Charges

Set forth below is the proposed schedule for fees we would charge the Town on bond and note issues.

Drafting of Bond Resolution and Associated Notices. We will not charge a separate fee for drafting the Bond Resolution for the Project (including the associated review of the Town's SEQRA determination). Rather, such services will be covered by our fee for the serial bond issue.

Bond Anticipation Notes ("BANs"). For each initial original issue bond anticipation note issue, we would charge a fee not to exceed \$1,000 plus \$0.50 per thousand dollars for the first note issued under a bond resolution, plus out-of-pocket disbursements. For each renewal note issue, we would charge a fee of \$800 plus \$0.50 per thousand dollars of notes issued, plus out-of-pocket disbursements. For example, under this fee schedule, for a \$900,000 original issue BAN,

our fee would be \$1,450, plus out-of-pocket disbursements; and for a \$900,000 renewal BAN, our fee would be \$1,250, plus out-of-pocket disbursements.

Statutory Installment Bonds. For a Statutory Installment Bond issue, we would charge a fee of \$2,000 plus \$1.00 per thousand dollars of bonds issued, plus out-of-pocket disbursements. Under this fee schedule, for a \$900,000 Statutory Installment Bond, our fee would be \$2,900, plus out-of-pocket disbursements.

Serial Bonds (competitive bid; with no Official Statement). For each serial bond under \$1,000,000 that is competitively bid and for which there is no Official Statement, we would charge a fee of \$3,000 plus \$1.00 per thousand dollars of bonds issued, plus out-of-pocket disbursements. Under this fee schedule, for a \$900,000 Serial Bond issue, our fee would be \$3,900, plus out-of-pocket disbursements.

Serial Bonds (competitive bid or private sale). For each serial bond issue that is either (i) \$1,000,000 or greater and that is competitively bid or (ii) that is being sold on a negotiated or private sale basis, we would charge a fee of \$4,000 plus \$1.00 per thousand dollars of bonds issued, plus out-of-pocket disbursements.

Non-Transactional Services. For all other services provided other than in connection with the issuance of the Bonds, we would charge the Town on an hourly basis for the amount of time devoted to the matter, at the following hourly rates: \$275 to \$375 for partners, \$175 to \$250 for associates and \$90 to \$125 for paralegals. Mr. Schachter's hourly rate will be \$375. Before undertaking any non-transactional services for the Town, we will advise the Town that such work will be billed on an hourly basis.

Disbursements. Disbursements for direct out-of-pocket costs, such as photocopying and facsimile charges, postage and courier charges, and travel costs, if any, would be billed to the Town in addition to the fees for services rendered. We expect the disbursements for each note financing would not exceed \$125 and we agree not to charge the Town for disbursements in excess of this amount. For bond financings, we estimate the disbursements will be in the range of \$100 to \$250 per bond issue and we agree not to charge the Town for disbursements in excess of \$250 per transaction.

In the event a dispute arises between the Town and the Firm regarding fees, the Town may have the right to arbitrate that dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to the Town upon request.

Should the Town ever issue a litigation hold to the Firm for a matter unrelated to the Firm (e.g., due to a subpoena or litigation/threatened litigation in which the Firm is not a party or potential party), the Town shall reimburse the Firm for its reasonable costs expended in complying with such litigation hold.

The above fee quotes are based upon our understanding of the scope of services customarily provided on financing transactions. In the event that there is a change in

circumstances which warrants significantly greater Bond Counsel services than which are normally required in connection with the types of transactions outlined above, we would contact you to arrange for an appropriate adjustment in our Bond Counsel fee, in an amount to be agreed upon with the Town at that time.

Billing and Collection Information

For services performed in connection with the issuance of bonds or notes, or other financings, our fees are normally billed after the closing of each transaction. We customarily do not submit an invoice for services until that time, unless there is a substantial delay in completing the financing or the financing is not completed. Our fee for the preparation of the Bond Resolution and associated notices at the Town's option will be billed upon the closing of the first bond anticipation note or bond issue for the Project, unless the Town determines not to proceed with financing the Project, in which case our fee would be due and payable at time of such determination. For services not associated with a specific financing transaction, we would bill the Town upon completion of such specific services, or for ongoing matters, on a monthly or other periodic basis, as agreed to with the Town.

Client Cooperation

By engaging us to serve as Bond Counsel, the Town agrees to cooperate fully with us and to provide promptly all information known or available to you relevant to our representation. The Town also agrees to pay in a timely manner our statements for services and expenses as provided above.

Conclusion of Representation; Disposition of Client Documents

Unless previously terminated, our representation with respect to the Matter will terminate upon the Firm sending to the Town a final statement for services rendered in connection with the Matter. Following such termination, any otherwise nonpublic information you have supplied to us that is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, the Firm will return the Town's papers and property promptly after receipt of payment for any outstanding fees and costs. If you do not make such a request within ninety (90) days following such termination, you agree and understand that any materials left with the Firm after the engagement ends may be retained or destroyed at our discretion. You should understand that "materials" include paper files, as well as information in other storage media, including voicemail, email, printer files, copier files, video files, and other formats. The Firm reserves the right to make, at our expense, copies of all documents generated or received by us in the course of our representation. The Firm's files pertaining to the Matter will be retained by the Firm. These Firm files include, for example, Firm administrative records; internal lawyers' work product, such as drafts, notes, and internal memoranda; and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. We will retain all remaining documents for a certain period of time, but reserve the right for various reasons, including the minimization of unnecessary storage expenses, to destroy or otherwise dispose of them within a reasonable time after the termination of the engagement.

Termination of Engagement

Either the Town or Harris Beach may terminate our engagement as Bond Counsel (the "Engagement") at any time for any reason by written notice, subject, on our part, to the rules of professional responsibility. No such termination, however, would relieve the Town of the obligation to pay the legal fees owed to Harris Beach for services performed and other charges owed to us through the date of termination. After the completion of our services on the Town's behalf, changes may occur in applicable laws or regulations that could have an impact upon the Town's future rights and liabilities. Unless the Town engages Harris Beach after completion of the Engagement to provide additional advice on issues arising from the Engagement or related matters, Harris Beach would have no continuing obligation to advise the Town with respect to future legal developments.

Communication with the Town

Unless the Town directs otherwise, the Firm will use unencrypted e-mail as the primary means of communication with the Town, and the Town shall inform the Firm of which e-mail address(es) the Firm should use for such communication. The Firm may also use cellular telephones (including smart phones) and facsimile machines to communicate with the Town. Texting is not a preferred method of communication, but may be used on a limited basis to communicate non-sensitive information to the Town. The Firm will take reasonable steps to protect the confidentiality of Firm-Client communications, but, unless applicable law provides otherwise, the Firm will not be responsible for disclosures of the Town's confidential information occurring from the use of such communication technologies. The Town agrees to notify the Firm if Client has any requests or requirements regarding the Firm's methods of communication with Client that differ from the foregoing.

Possible Conflicts

Conflicts of interest will be handled as required by applicable rules of professional conduct. Unless otherwise agreed, for the purpose of determining whether a conflict of interest exists, it is only the Town that the Firm represents, and not any of its Affiliates. The Town agrees not to give the Firm any confidential information regarding any Affiliate unless: (a) that Affiliate has separately engaged the Firm to perform services on that Affiliate's behalf; or (b) such information is essential to the engagement set forth herein. While the Firm recognizes that to act adversely to any Affiliate could jeopardize a long-term relationship with the Town, which the Firm does not wish to do, for conflict of interest purposes the Firm reserves the right to represent another client with interests adverse to any Affiliate that is not itself a Firm client without obtaining any consent from the Town or the Town's Affiliates.

The Firm maintains a Risk Management Committee that acts as in-house counsel to its attorneys and will, on occasion, retain outside counsel when an attorney handling a client matter may have a concern on a matter of professional responsibility. To the extent the Firm is addressing its duties, obligations, or responsibilities to the Town in those consultations, it is possible that a conflict of interest might be deemed to exist as between Firm lawyers or the Firm

and the Town. The Town agrees that these consultations are protected from disclosure by the Firm's attorney-client privilege and that the Town will not seek to discover or inquire into them. Of course, nothing in the foregoing shall diminish or otherwise affect the Firm's obligation to keep Client informed of material developments in the Firm's representation of the Town, including any conclusions arising out of such consultations to the extent that they affect the Town's interests.

Please contact me directly with any questions regarding this engagement letter. Otherwise, if this proposal is acceptable, please so indicate by returning a countersigned copy of this engagement. Consistent with its policy, the Firm reserves the right to delay commencement of work on this Matter until the Town has signed and returned this engagement letter to.

We appreciate the opportunity to present this proposal to serve as Bond Counsel to the Town. If you find the terms of this proposal acceptable, please have the enclosed copy of this letter signed on the signature line provided below and return it to my attention. Please call me with any questions regarding the foregoing.

Very truly yours,



Charles I. Schachter

CIS:an
Enclosure

Agreed to and accepted this
_____ day of _____, 2018

TOWN OF PENDLETON

By: _____
Name: _____
Title: _____