CITY OF STOUGHTON, 207 S FORREST STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL

Resolution authorizing the proper City official(s) to enter into a Master Advisory Services Agreement and related Statement of Work with Baker Tilly for services related to administering the Fiscal Recovery Funds received as part of the American Rescue Plan

Committee Action: Finance Committee Meets July 13, 2021

Fiscal Impact: Max $20,000

File Number:	R -XX-2021	**Date Introduced:**	July 13, 2021

WHEREAS, the City of Stoughton is currently developing expenditure programs as part of the Fiscal Recovery Funds ("FRF") it will be receiving through the American Rescue Plan ("ARP"); and

WHEREAS, due to the amount of compliance work required and the level of interpretation involved, the City's Finance Department has requested a Master Advisory Services Agreement and related Statement of Work from Baker Tilly to assist with navigating the intricacies of the ARP; and

WHEREAS, Baker Tilly has an in-depth knowledge of the City's finances placing them in the best position to assist us with this work; and

WHEREAS, the fees associated with this work will be on a time and materials basis not to exceed $20,000 and will be reimbursable through the ARP funds; and

WHEREAS, your Finance Committee met on July 13, 2021 and recommends authorizing the proper City official(s) to enter into a Master Advisory Services Agreement and related Statement of Work with Baker Tilly for services related to administering the Fiscal Recovery Funds as part of the American Rescue Plan; and

THEREFORE, BE IT RESOLVED by the Common Council of the City of Stoughton that the proper City official(s) are authorized to enter into a Master Advisory Services Agreement and related Statement of Work with Baker Tilly for services related to administering the Fiscal Recovery Funds as part of the American Rescue Plan.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____

Mayor Tim Swadley Date

Council Action: _____ ☐ **Override** **Vote** _____

July 6, 2021

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Mr. Jamin Friedl
Director of Finance/Comptroller
City of Stoughton
207 S Forrest Street
Stoughton, Wisconsin 53589

RE: Engagement Letter Agreement Related to Advisory Services

This letter agreement (the "Engagement Letter") is to confirm our understanding of the basis upon which Baker Tilly US, LLP ("Baker Tilly") and its affiliates are being engaged by the City of Stoughton, Wisconsin (the "Client") to assist the Client with advisory services.

Scope, Objectives and Approach

It is anticipated that projects undertaken in accordance with this Engagement Letter will be at the request of the Client. The scope of services, additional terms and associated fee for individual engagements will be contained in a Scope Appendix or Appendices ("Statement of Work") to this Engagement Letter. Authorization to provide services will commence upon execution and return of this Engagement Letter and one or more Statement of Work.

Applicable responsibilities and limitations to be included in individual Scope Appendix/es.

Management's Responsibilities

It is understood that Baker Tilly will serve in an advisory capacity with the Client. The Client 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 Client is responsible for evaluating the adequacy and results of the services performed and accepting responsibility for such services. The Client is responsible for establishing and maintaining internal controls, including monitoring ongoing activities.

The procedures we perform in our engagement will be heavily influenced by the representations that we receive from Client personnel. Accordingly, false representations could cause material errors to go undetected. The Client, therefore, agrees that Baker Tilly will have no liability in connection with claims based upon our failure to detect material errors resulting from false representations made to us by any Client personnel and our failure to provide an acceptable level of service due to those false representations.

The ability to provide service according to timelines established and at fees indicated will rely in part on receiving timely responses from the Client. The Client will provide information and responses to deliverables within the timeframes established in a Statement of Work unless subsequently agreed otherwise in writing.

The services provided under this Engagement Letter and the Statement of Work, does not include an audit or review of records or the expression of an opinion on financial data.

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Ownership of IP

Unless otherwise stated in a specific Statement of Work, subject to Baker Tilly's rights in Baker Tilly's Knowledge (as defined below), Client shall own all intellectual property rights in the deliverables developed under the applicable Statement of Work ("Deliverables"). Notwithstanding the foregoing, Baker Tilly will maintain all ownership right, title and interest to all Baker Tilly's Knowledge. For purposes of this Agreement "Baker Tilly's Knowledge" means Baker Tilly's proprietary programs, modules, products, inventions, designs, data, or other information, including all copyright, patent, trademark and other intellectual property rights related thereto, that are (1) owned or developed by Contractor prior to the Effective Date of this Engagement Letter or the applicable Statement of Work. ("Baker Tilly's Preexisting Knowledge") (2) developed or obtained by Baker Tilly after the Effective Date, that are reusable from client to client and project to project, where Client has not paid for such development; and (3) extensions, enhancements, or modifications of Baker Tilly's Preexisting Knowledge which do not include or incorporate Client's confidential information. To the extent that any Baker Tilly Knowledge is incorporated into the Deliverables, Baker Tilly grants to Client a non-exclusive, paid up, perpetual royalty-free worldwide license to use such Baker Tilly Knowledge in connection with the Deliverables, and for no other purpose without the prior written consent of Baker Tilly. Additionally, Baker Tilly may maintain copies of its work papers for a period of time and for use in a manner sufficient to satisfy any applicable legal or regulatory requirements for records retention.

Timing and Fees

Specific services will commence upon execution and return of a Statement of Work to this Engagement Letter and our professional fees will be based on the rates outlined in such Statement of Work.

Unless otherwise stated, in addition to the fees described in a Statement of Work the Client will pay all of Baker Tilly's reasonable out-of-pocket expenses incurred in connection with the engagement. All out of pocket costs will be passed through at cost and will be in addition to the professional fee.

Dispute Resolution

Except for disputes related to confidentiality or intellectual property rights, all disputes and controversies between the parties hereto of every kind and nature arising out of or in connection with this Engagement Letter or the applicable Statement of Work as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuation, or termination of this Engagement Letter or the applicable Statement of Work shall be resolved as set forth in this section using the following procedure: In the unlikely event that differences concerning the services or fees provided by Baker Tilly should arise that are not resolved by mutual agreement, both parties agree to attempt in good faith to settle the dispute by engaging in mediation administered by the American Arbitration Association under its mediation rules for professional accounting and related services disputes before resorting to litigation or any other dispute resolution procedure. Each party shall bear their own expenses from mediation and the fees and expenses of the mediator shall be shared equally by the parties. If the dispute is not resolved by mediation, then the parties agree to expressly waive trial by jury in any judicial proceeding involving directly or indirectly, any matter (whether sounding in tort, contract, or otherwise) in any way arising out of, related to, or connected with this Engagement Letter or the applicable Statement of Work or the relationship of the parties established hereunder.

Because a breach of any the provisions of this Engagement Letter or the applicable Statement of Work as concerning confidentiality or intellectual property rights will irreparably harm the non-breaching party, Client and Baker Tilly agree that if a party breaches any of its obligations thereunder, the non-breaching party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights thereunder, including without limitation protection of its proprietary rights. The parties agree that the parties need not invoke the mediation procedures set forth in this section in order to seek injunctive or declaratory relief.

Limitation on Damages

To the extent allowed under applicable law, the aggregate liability (including attorney's fees and all other costs) of either party and its present or former partners, principals, agents or employees to the other party related to the services performed under an applicable Statement of Work shall not exceed the fees paid to Baker Tilly under the applicable Statement of Work to which the claim relates, except to the extent finally determined to have resulted from the gross negligence, willful misconduct or fraudulent behavior of the at-fault party. Additionally, in no event shall either party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays or interruptions arising out of or related to this Engagement Letter or the applicable Statement of Work even if the other party has been advised of the possibility of such damages.

Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Engagement Letter are material bargained for bases of this Engagement Letter and that they have been taken into account and reflected in determining the consideration to be given by each party under this Engagement Letter and in the decision by each party to enter into this Engagement Letter.

The terms of this section shall apply regardless of the nature of any claim asserted (including, but not limited to, contract, tort or any form of negligence, whether of you, Baker Tilly or others), but these terms shall not apply to the extent finally determined to be contrary to the applicable law or regulation. These terms shall also continue to apply after any termination of this Engagement Letter.

You accept and acknowledge that any legal proceedings arising from or in conjunction with the services provided under this Engagement Letter must be commenced within twelve (12) months after the performance of the services for which the action is brought, without consideration as to the time of discovery of any claim.

Other Matters

In the event Baker Tilly is requested by the Client; or required by government regulation, subpoena, or other legal process to produce our engagement working papers or its personnel as witnesses with respect to its Services rendered for the Client, so long as Baker Tilly is not a party to the proceeding in which the information is sought, Client will reimburse Baker Tilly for its professional time and expenses, as well as the fees and legal expenses incurred in responding to such a request.

Neither this Engagement Letter, any claim, nor any rights or licenses granted hereunder may be assigned, delegated, or subcontracted by either party without the 'written consent of the other part. Either party may assign and transfer this Engagement Letter to any successor that acquires all or substantially all of the business or assets of such party by way of merger, consolidation, other business reorganization, or the sale of interest or assets, provided that the party notifies the other party in writing of such assignment and the successor agrees in writing to be bound by the terms and conditions of this Engagement Letter.

In the event that any provision of this Engagement Letter or Statement of Work hereto is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Engagement Letter or statement of work did not contain the particular provisions held to be unenforceable. The unenforceable provisions shall be replaced by mutually acceptable provisions which, being valid, legal, and enforceable, come closest to the intention of the parties underlying the invalid or unenforceable provision. If the Services should become subject to the independence rules of the U.S. Securities and Exchange Commission with respect to Client, such that any provision of this Engagement Letter would impair Baker Tilly's independence under its rules, such provision(s) shall be of no effect.

Termination

Both the Client and Baker Tilly have the right to terminate this Engagement Letter or any work being done under an individual Statement of Work 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 Client and Baker Tilly, the Statement of Work will terminate 60 days after completion of the services in such Statement of Work.

Affiliated Entities

Baker Tilly US, LLP is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. Baker Tilly US, LLP is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, Baker Tilly US, LLP, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. The name Baker Tilly and its associated logo is used under license from Baker Tilly International Limited.

This Engagement Letter, as updated from time to time, comprises the complete and exclusive statement of the agreement between the parties, superseding all proposals, oral or written, and all other communications between the parties. Both parties acknowledge that work performed pursuant to the Engagement Letter will be done through a Statement of Work executed and made a part of this document.

Any rights and duties of the parties that by their nature extend beyond the expiration or termination of this Engagement Letter shall survive the expiration or termination of this Engagement Letter or any Statement of Work contained hereto.

If this Engagement Letter is acceptable, please sign below and return one copy to us for our files.

Sincerely,

Carla A. Gogin, CPA
Partner

Signature Section:

The terms as set forth in this Engagement Letter are agreed to on behalf of the Client by:

Name: _____
Title: _____
Date: _____

RE: Proposed Advisory Services Related to the Fiscal Recovery Funds ("FRF") as part of the American Rescue Plan ("ARP")

DATE: June 17, 2021

This Statement of Work ("SOW") is attached by reference to the above-named Engagement Letter between the City of Stoughton, Wisconsin (the "Client") and Baker Tilly US, LLP ("Baker Tilly") and relates to services to be provided by Baker Tilly.

SCOPE OF WORK

Baker Tilly will perform the following services:

A. Fiscal Recovery Fund of the American Rescue Plan ("FRF") Program Support

1. Develop an understanding of eligible uses and limitations of the FRF.
2. Assist Client to systematically assemble community priorities including computation of lost revenues.
3. Support Client with accounting and reporting compliance matters.
4. Attend meetings with Client and stakeholders (as needed).

Nonattest Services

As part of this engagement, we will perform certain nonattest services. For purposes of the Engagement Letter and this SOW, nonattest services include services that the *Government Auditing Standards* refers to as nonaudit services.

We will not perform any management functions or make management decisions on your behalf with respect to any nonattest services we provide.

In connection with our performance of any nonattest services, you agree that you will:

- Continue to make all management decisions and perform all management functions, including approving all journal entries and general ledger classifications when they are submitted to you.
- Designate an employee with suitable skill, knowledge, and/or experience, preferably within senior management, to oversee the services we perform.
- Evaluate the adequacy and results of the nonattest services we perform.
- Accept responsibility for the results of our nonattest services.
- Establish and maintain internal controls, including monitoring ongoing activities related to the nonattest function.

Compensation and Invoicing

Baker Tilly's fees for services set forth in the SOW will be billed at Baker Tilly's standard billing rates based upon the actual time and expenses incurred and will not exceed Twenty Thousand Dollars ($20,000) without further authorization from the Client.

Hourly Rates by Job Classification
1/1/2021

Partners / Principals / Directors	$240.00	to	$500.00
Senior Managers / Managers	$200.00	to	$325.00
Senior Associates / Consultants	$150.00	to	$250.00
Associates / Consultants	$135.00	to	$200.00
Support Personnel	$110.00	to	$150.00
Interns	$90.00	to	$110.00

- *Billing rates are subject to change periodically due to changing requirements and economic conditions. Actual fees will be based upon experience of the staff assigned and the complexity of the engagement.*

Termination

Notwithstanding termination provisions contained in the Engagement Letter, this SOW is intended to be ongoing and applicable individually to specific services as if they are the sole subject of the SOW. As such, termination may occur for a specific Sub-engagement without terminating the SOW itself. On termination of a Sub-engagement or the SOW, all fees and charges incurred prior to termination shall be paid promptly. Unless otherwise agreed to by the Client and Baker Tilly, the scope of services provided in a Sub-engagement performed under this Scope Appendix will terminate 60 days after completion of the services for such Sub-engagement.

If this Statement of Work is acceptable, please sign below and return one copy to us for our files. We look forward to working with you on this important project.

Sincerely,

Carla A. Gogin, Partner

Signature Section:

The services and terms as set forth in this Statement of Work are agreed to on behalf of the Client by:

Name: _____

Title: _____

Date: _____