

April 12, 2019

Tillie LaPlante  
Finance Director  
City of Bonner Springs

Via: E-mail

Dear Tillie,

This agreement confirms the parties' understanding of the terms of engagement between MarksNelson LLC, ("MarksNelson" or "we"), and the **City of Bonner Springs**, (the "Company" or "you"), to provide accounting and consulting services as described below, (the "Services"), for your development project.

### **Objective and Scope of Services**

We will assist you with your financial planning and organizational structure in connection with the development of a 1918 historic building in Bonner Springs, Kansas, (the Project). We will provide you with the following services:

- Meet with you and other key personnel to discuss and evaluate your goals and objectives.
- Assist in identifying and classifying qualified rehabilitation expenditures (QRE) in obtaining historic tax credits. We will assist in your preparation of the KDOR required Schedules I and II and perform a review of the Schedules prior to submission.
- Assist you in developing policies and practices that aid in identifying and classifying qualified rehabilitation expenditures (QRE) in obtaining historic tax credits.
- Advise and assist you regarding accessing the current ownership's ability to use and retain the historic tax credits.
- If requested by you, we will compile the KDOR Schedules I and II and submit to KDOR on your behalf. Estimated fees would be as outlined in Engagement Administration, Fees, and Other section. A separate engagement letter would follow for this service.
- If requested by you or the KDOR, we will perform an audit of the KDOR Schedules I and II and submit to KDOR on your behalf. Fees would be as outlined in Engagement Administration, Fees, and Other section. A separate engagement letter would follow for this service.
- Other consulting services, as needed. Any additional services will be documented.

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## **Management Functions**

As a condition of our performing the services described above, you agree to:

- make all management decisions and perform all management functions;
- designate a Project Sponsor who possesses suitable skill, knowledge, and/or experience, preferably within senior management, to oversee the services;
- evaluate the adequacy and results of the services performed;
- accept responsibility for making decisions regarding the implementation of any recommendations noted; and
- establish and maintain internal controls over the processes related to the services to be provided and monitor the effectiveness of such internal controls.

You agree that your management and employees are responsible for the proper recording of transactions in the records, the safekeeping of assets, and the accuracy of any prepared financial statements. We have no responsibility to identify and communicate deficiencies or material weaknesses in your internal controls as part of this engagement.

Your management is responsible for establishing and maintaining an effective internal control structure. Our assistance is intended to help management in fulfilling these responsibilities.

## **Use of Deliverables**

You agree not to use the Deliverables for any purpose other than for the purposes set forth in this letter. Any other use, except where MarksNelson provides express written authorization, is unauthorized and may be misleading.

All Deliverables are solely for your internal use and benefit. In addition, any preliminary oral or written advice and comments or draft Deliverables should be regarded as preliminary and work in progress and, as such, we do not assume any responsibility for them unless we specifically confirm that advice or comments in writing or otherwise reduce such draft to a final Deliverable.

We may provide to you electronic materials, (including spreadsheets, documents, databases and other tools), that we develop for our own purposes to assist us in the Services, and without consideration of any other purpose. All such materials are provided to you on an 'as is' basis and we make no representations or warranties as to the operation, accuracy, sufficiency or appropriateness of such electronic materials for any purpose.

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## **Our Responsibilities and Limitations**

We will perform the advisory services in accordance with American Institute of Certified Public Accountants, ("AICPA"), Standards for Consulting Services. We perform any accounting advisory services in accordance with the AICPA's Standards for Reports on the Application of Accounting Principles (as amended and interpreted).

The Services do not constitute an audit conducted in accordance with generally accepted auditing standards, an examination of any type, an accounting opinion, or other attestation or review services in accordance with standards established by the AICPA or accordingly, we will not express an opinion or any other form of assurance on accounting matters or financial statements or any financial or other information, or operating and internal controls of any entity (collectively, "Attestation Services").

The Services are not designed to and are not likely to reveal fraud or misrepresentation by any person. The Services do not include the provision of legal advice and we make no representations regarding questions of legal interpretation. You should consult with your attorneys with respect to any matters that require legal interpretation.

## **Client's Responsibilities**

The overall definition and scope of the Services to be performed, and its adequacy in addressing your needs, is your responsibility. We make no representations as to whether the Services are sufficient for your purposes. It is your responsibility to designate management-level Project Sponsor to be responsible for overseeing the Services, to evaluate the adequacy of the Services performed and any findings, observations or advice that result, and to make all management decisions and perform all management functions, including accepting responsibility for the implementation of actions identified in the course of this engagement and results achieved from using the Services and/or Deliverables. We have not been engaged to, nor will we, provide any management functions or make management decisions.

You shall provide us with all information relevant to the Services and any reasonable assistance as may be required to properly perform the Services and all such information will be accurate and complete in all material respects. You agree to bring to our attention any matters that could reasonably be expected to require further consideration to determine the proper treatment of any relevant item. You also agree to bring to our attention any changes in the information as originally presented as soon as such information becomes available.

## **Timing of Engagement**

We are prepared to begin work upon receipt of a signed copy of this engagement letter and at a time mutually determined by the City of Bonner Springs and MarksNelson. Our services will conclude as of the date by written notification by either party.

## **Electronic Data Communication and Storage and Use of Third-Party Service Provider**

In the interest of facilitating our services to your company, we may send data over the Internet, store electronic data via computer software applications hosted remotely on the Internet, or allow access to data through secured portals or software applications hosted by third-party vendors. Electronic data that is confidential to your company may be transmitted or stored using these methods. We may use third-party service providers to store or transmit this data. In using these data communication and storage methods, our firm employs measures designed to maintain data security. We use reasonable efforts to keep such communications and data access secure in accordance with our obligations under applicable laws and professional standards. We also require all of our third-party vendors to do the same

You recognize and accept that we have no control over the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors. You consent to our use of these electronic devices and applications and submission of confidential client information to third-party service providers during this engagement.

To enhance our services to you, we will use a Portal, a collaborative, virtual workspace in a protected, online environment. The Portal allows for real-time collaboration across geographic boundaries and time zones and allows MarksNelson and you to share data, engagement information, knowledge, and deliverables in a protected environment. You agree that MarksNelson has no responsibility for the activities of the Portal and agree to indemnify and hold MarksNelson harmless with respect to any and all claims arising from or related to the operation of the Portal. While the Portal backs up your files to a third party server, we recommend that you also maintain your own backup files of these records.

## **Engagement Administration, Fees, and Other**

We have been requested to provide on-going services on an as needed basis by the Company. We will advise you promptly should we believe we will be unable to provide the Services to meet your needs.

The fees are based on the time required to complete the engagement. Individual hourly rates vary according to the experience and skill required. The fees for the Services will be based on the following agreed upon hourly rates, which will be revised from time to time. Adjusted rates will be reflected in billings:

<u>Personnel</u>	<u>Hourly Billing Rate</u>
Partner	\$ 280
Manager	\$ 210
Senior Associate	\$ 135
Staff	\$ 125

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A retainer fee of \$1,000 is due with the signing of this letter. No interest shall accrue or be paid on the funds held as a retainer. The retainer will be applied to current billings as registered. The retainer is not an estimate of the total cost of the engagement. Based upon our preliminary planning, the fee for these services should be \$3,500, (\$1,000 to assist with planning of the project and \$2,500 to assist with identification of QRE's).

If a compilation is requested, estimated fees for these services should be between \$5,000 and \$6,000. If an audit is requested, estimated fees for these services should be between \$7,500 and \$15,000. These services will be subject to a separate engagement letter.

It should be recognized that the estimated fees could be affected by unusual circumstances we cannot foresee at this particular time. However, if we should encounter such problems, we will immediately contact you to discuss the implications of the new developments.

Invoices are due within 30 days of the invoice date. If payment is not received by the due date, you will be assessed interest charges of 1.25% per month on the unpaid balance. We reserve the right to suspend or terminate our work. If our work is suspended or terminated, you agree that we will not be responsible for your failure to meet government and other deadlines, for penalties or interest that may be assessed against you resulting from your failure to meet such deadlines, and for any other damages (including consequential damages) incurred as a result of the suspension or termination of work. We reserve the right to withdraw from this engagement without completing the work if you fail to comply with the terms of this engagement letter. Our withdrawal will release us from any obligation to complete your Services and will constitute completion of our engagement. You agree to compensate us for our time and out-of-pocket expenses through the date of our withdrawal. If for any reason the account is turned over to an attorney for collection, an additional charge of 33 $\frac{1}{3}$ % will be added to cover collection costs.

In the event of a dispute related in any way to our services, our firm and you agree to discuss the dispute and, if we cannot resolve the dispute, to promptly mediate in a good faith effort to resolve. We will agree on a mediator, but if we cannot, either of us may apply to a court having personal jurisdiction over the parties for appointment of a mediator. We will share the mediator's fees and expenses equally, but otherwise will bear our own attorneys' fees and mediation cost. The mediation shall be confidential in all respects, as allowed or required by law.

If mediation fails, then such dispute, controversy or claim shall be settled by binding arbitration. The proceeding shall take place in Kansas City, Missouri and shall be governed by the law and provisions of the Federal Arbitration Act ("FAA") or, if a court of competent jurisdiction determines the FAA inapplicable, by the laws of the state of Missouri. The arbitration shall be conducted in accordance with the Rules for Professional Accounting and Related Disputes of the American Arbitration Association ("The AAA Rules") in effect at the time of the arbitration. The award issued by the arbitration panel may be conformed in a judgment by any federal or state court of competent jurisdiction.

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It is understood and agreed that MarksNelson LLC has expended considerable resources, time and effort in hiring, training and developing its employees, who are assigned and provide services to you. In consideration for MarksNelson's agreement to provide these services, you agree to not, directly or indirectly, hire or solicit for employment the employees of MarksNelson for a period of two years from the last date MarksNelson provided services to you. In the event that any such MarksNelson employee is hired by you, you agree to pay a fee to MarksNelson equal to 50% of the annual total compensation of such employee, payable upon the employee's commencement of employment.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Sincerely,

**MARKSNELSON LLC**

Christine E. Johnston  
Christine E. Johnston (Apr 15, 2019)

Christine E. Johnston, CPA, CGMA, CMA, MAcc

CEJ/de

**Agreed and Accepted by:**

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Sean Pederson

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Date