

RESOLUTION 30-19

**RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT BETWEEN
THE BOROUGH OF CLAYTON AND PHOENIX ADVISORS, LLC**

WHEREAS, the Borough of Clayton has agreed to enter into an Agreement for Continuing Disclosure Services with Phoenix Advisors, LLC; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby approve the attached Agreement between the Borough of Clayton and Phoenix Advisors, LLC.
2. The term of this contract shall be from January 1, 2019 to December 31, 2019, in an amount not to exceed \$1,500.00.
3. Donna Nestore, CFO, for the Borough of Clayton certifies the above referenced dollar amount is available through the Legal O&E line item in the 2019 budget. The maximum dollar value is based on a reasonable estimate of the goods or services required over the contract term, and the Borough of Clayton is not obligated to spend that amount.
4. That the CFO, Donna Nestore be and is hereby authorized to execute said contract on behalf of the Borough of Clayton.

ADOPTED, at a regular meeting of the Mayor and Council of the Borough of Clayton held on January 3, 2019.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

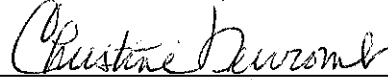
Attest:



CHRISTINE NEWCOMB, Borough Clerk

CERTIFICATION

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on January 3, 2019.

A handwritten signature in cursive script, reading "Christine Newcomb", written in dark ink.

CHRISTINE NEWCOMB, Borough Clerk

**2019
AGREEMENT for**



**CONTINUING DISCLOSURE and
INDEPENDENT REGISTERED MUNICIPAL ADVISOR SERVICES**

THIS AGREEMENT, made and entered into on this ____ day of January 2019 (the "Agreement") by and between Clayton Borough, 125 N. Delsea Drive, Clayton, NJ 08312-1698 (the "Issuer"), and Phoenix Advisors, LLC, 625 Farnsworth Avenue, Bordentown, New Jersey 08505 ("Phoenix Advisors") for the provision of professional services as more fully described in the accompanying Scope of Services.

WITNESSETH:

WHEREAS, the Issuer has heretofore agreed through the execution of Continuing Disclosure Agreements ("CDAs") in connection with one or more bond issuances to provide certain financial and other information and notices, within specified timeframes, to the marketplace in a manner prescribed by the regulators of the underwriter that purchased said bond issues; and

WHEREAS, Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") governs the many aspects of continuing disclosure; and

WHEREAS, Phoenix Advisors provides continuing disclosure agent services, has expertise as Continuing Disclosure Agent ("Disclosure Agent"), and has heretofore been appointed by the Issuer to serve as its Disclosure Agent until the expiration of this Agreement, as defined in Section 4 herein; and

WHEREAS, Phoenix Advisors, being duly registered as a Municipal Advisor with the Securities and Exchange Commission (the "SEC") and the Municipal Securities Rulemaking Board (the "MSRB"), provides professional municipal advisory services and has heretofore been appointed by the Issuer to be its Independent Registered Municipal Advisor ("IRMA") and to provide such municipal advisory services as may be requested until the expiration of this Agreement, as defined in Section 4 herein; and

WHEREAS, the parties desire to set forth herein the terms and conditions under which Phoenix Advisors will provide such services to the Issuer.

NOW, THEREFORE, THE PARTIES HERETO, IN CONSIDERATION OF MUTUAL COVENANTS HEREIN CONTAINED AND OTHER GOOD AND VALUABLE CONSIDERATION, EACH INTENDING TO BE LEGALLY BOUND, HEREBY AGREE AS FOLLOWS:

Section 1 - CONTINUING DISCLOSURE SERVICES

- I. The Issuer's Disclosure Agent will assist the Issuer in meeting the secondary market disclosure obligations delineated in its relevant CDAs as specified under the Rule, including the required posting of certain material event ("Event") notices.

The Issuer understands and acknowledges that its full and complete cooperation is requisite to the Disclosure Agent's success assisting the Issuer in maintaining compliance with its CDAs and requirements of the Rule. The Issuer agrees that it will:

- i. Make all documents required to be filed under its CDAs available to the Disclosure Agent in a timely manner.
 - ii. Notify the Disclosure Agent immediately of any Event requiring the filing of a notice under the Rule or its CDAs.
- II. This Agreement applies to bonds issued since the effective date of the secondary market disclosure requirements of the Rule, unless said bonds are excepted under the Rule.
- III. Phoenix Advisors will perform such services relating to its role as the Issuer's Disclosure Agent to a professional standard. The scope of the Disclosure Agent services and methodology are described below:
 - i. **Codify Issues That Are Subject to Continuing Disclosure**

To make timely and accurate disclosure filings on the MSRB's Electronic Municipal Market Access Data Port website ("EMMA"), the Disclosure Agent will obtain and examine the Issuer's Official Statements relating to the outstanding bond issues to research the requirements found in the CDAs.
 - ii. **Security Setup**

Details of each outstanding issue and filing obligations will be entered into our proprietary database. This security setup allows all database functions to be applied to each outstanding issue.
 - iii. **Review Data contained in Annual Financial Statements**

The Disclosure Agent will carefully review the Issuer's financial statements for information concerning debt and lease obligations and discuss with the Issuer its filing or reporting obligations. This will include requirements imposed by financial obligations other than publicly offered securities.
 - iv. **Monitor, React, and Meet Filing Deadlines**

A variety of deadlines can be difficult for an issuer to monitor. A schedule of filing dates for outstanding bond issues is a part of the database to ensure that required filings are not missed. We actively monitor each client's unique deadlines to ensure timely filing of required documents. Our proprietary database produces ongoing reports that are used to alert the Issuer to approaching filing deadlines providing an important safeguard for the timely filing of continuing disclosure information.

The Disclosure Agent endeavors to gather required documents from public sources, e.g., state and local websites, to lessen the client's burden. Often, dissemination agents wait for an issuer to provide required documents, then file only on the specific issues for which they were hired. Phoenix Advisors takes a more helpful, proactive approach to client service. When we must obtain documents from clients, we provide email reminders sufficiently in advance of upcoming deadlines, then follow up as necessary until the filing is completed.

- v. **File Financial and Operating Data to Meet Your Obligations**
In addition to filing Audited Financial information, CDAs require the filing of Operating Data. If the operating data is prepared with the assistance of the Disclosure Agent, the report will typically contain information consistent with the statistical data found in relevant Official Statements. This process often requires collaboration with other of the Issuer's obtained professionals.
- vi. **Confirm Filings to Client in Real Time**
The MSRB generates a submission confirmation for all disclosure filings made on EMMA. The Disclosure Agent will promptly send the Issuer an email copy of the MSRB's confirmation of every required, voluntary or Event filing made on the Issuer's behalf.
- vii. **File Documents Uniformly, Accurately, and Promptly**
EMMA is a powerful resource for investors, analysts and, importantly, underwriters that bid on debt issues. It is vital that information filed with EMMA be easily identified. The Disclosure Agent uses consistent naming and filing conventions, applying descriptive titles to filings, and properly associating them with the correct CUSIP on EMMA. The result is a uniform and logical chronology of data where EMMA users can easily find what they need.

The Disclosure Agent files documents on EMMA within forty-eight (48) hours of receipt. However, most documents are filed on the same business day they are received.
- viii. **Coordinate and Submit Voluntary Information**
Voluntary filings are important. We gather documents including Budgets, Debt Statements, and unaudited financials, then file them as voluntary submissions. Phoenix Advisors' Continuing Disclosure Service goes several important steps further than standard dissemination services. The marketplace is hungry for information. The more factual and complete information the Issuer provides, the more professional and forthcoming their appearance will be to market participants. This encourages market participants to buy and trade debt. Increased demand means better interest rates.
- ix. **Monitor Need for Material Events and Timely Filing of Notices**
There is a significant list of items that regulators deem to be Events which, if they occur, require a notice to be filed within ten (10) business days of the Event. The occurrence of an Event is often not apparent to those who are not directly involved with a transaction or with the Issuer's financial operations. It is the Issuer's responsibility to always notify the Disclosure Agent of any reportable Event.
- x. **Actively Monitor Issuer Rating Changes**
Rating changes are also Events which require notices to be filed on EMMA. The Disclosure Agent's staff regularly monitors rating agency news and updates for rating changes that affect the Issuer and the appropriate Event notices are filed. Issuers are always notified by the rating agencies when their ratings are adjusted, when they do, the Issuer must alert the Disclosure Agent.

- xi. **Monitor Bond Insurer and Program Rating Changes**
If a municipal bond insurer or a state program, e.g., a school bond enhancement program, is affected by a rating change, then all the bonds that carry that insurance or participate in that program will undergo a rating change, too. We monitor these types of rating changes, determine which, if any, of our clients are affected, and file the appropriate Event notices.
- xii. **Provide a Comprehensive Report Each Fiscal Year**
We know the importance of documentation, and of well-organized files. The Disclosure Agent prepares a continuing disclosure report ("Annual Report") each year that shows every issue on which there is a continuing disclosure obligation, every filing, and every Event notice filed on the Issuer's behalf during the year. The Annual Report also recaps a five (5) year history of the Issuers filings. Investors, underwriters of bonds, and the Issuer want to see the record of filing history extending back for this time period. An accurate record during this timeframe is important to the Issuer when it prepares Official Statements since a misstatement in such a document could have serious legal consequences.
- xiii. **Acceptance of Annual Report**
The Annual Report highlights any exceptions to filings which were required and the timeliness of filings. The Annual Report is in addition to the copy of the filing confirmation sent to the Issuer when each filing is done by the Disclosure Agent. The Issuer must carefully review said report and relay to the Disclosure Agent within ten (10) business days, any error, discrepancy, omission, or concern relating to the accuracy or completeness of the Annual Report. It is agreed that after ten (10) business days and absent notice from the Issuer, the Annual Report is accepted by the Issuer is accurate and complete.

Section 2 - CONTINUING DISCLOSURE SERVICES COMPENSATION

- i. The bond Issuer will compensate Phoenix Advisors for its services as Disclosure Agent, in accordance as set forth below:

- i. **Disclosure Agent Service:**

- \$1,050 – base fee (for up to three (3) outstanding issues), plus \$100 for each additional outstanding issue, if any, for which filings may be required.

- A setup fee will be charged for each new bond issuance. The setup fee will be \$200 on a bond issue on which Phoenix Advisors acts as Municipal Advisor, or \$450 if Phoenix Advisor is not engaged as Municipal Advisor. The setup fee will be invoiced at the time the new bonds are issued.

- An amendment made to the Rule, effective February 27, 2019, increases the number of material events ("Events") which must be posted through the MSRB's Electronic Municipal Market Access Data Port ("EMMA"). Phoenix Advisors will charge \$100 for each Event filing made under the Rule's new Events. When Phoenix Advisors is engaged as Municipal Advisor on a transaction that involves such Event filing, the fee will be waived.

Section 3 – INDEPENDENT REGISTERED MUNICIPAL ADVISOR

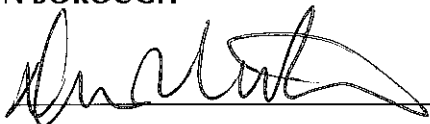
- I. Under the Dodd-Frank law the SEC requires that any person or entity that provides advice to an issuer of municipal securities be licensed and regulated by the SEC and the MSRB to provide any such advice.
 - i. Professionals providing advice to the Issuer must hold a Series 50 securities license.
 - ii. Phoenix Advisors professionals are Series 50 licensed and are also subject to a continuing education protocol.
 - iii. Under the SEC and MSRB regulations the Municipal Advisor owes a Fiduciary Obligation to the Issuer.
- II. There is no separate fee, financial cost or obligation with regard to the Issuer's appointment of Phoenix Advisors as the Issuer's Independent Registered Municipal Advisor ("IRMA" or "Municipal Advisor"). As the Issuer's IRMA, we will be available to answer general questions concerning outstanding debt issues, market conditions, prepare a preliminary project analysis, or preliminarily review financing proposals received by the Issuer on an as requested basis.
 - iv. The Issuer by designating an IRMA allows third parties, primarily broker-dealer underwriting firms, but also other professional disciplines to submit proposals and ideas concerning financings to the Issuer.
 - v. Failure to actively seek advice from the Municipal Advisor means there is no one on your side appropriately licensed to advise the Issuer concerning the issuance or structure of municipal obligations, including bonds, notes, leases or bank loans the Issuer may embark upon.
- III. When and if the Issuer requests the Municipal Advisor's involvement in a debt issuance, the undertaking of a financial obligation, an in-depth evaluation of a proposal or project, perform a consultant service, or assist with rating agency surveillance, a separate Fee Addendum to this Agreement together with a scope of service will be provided for the Issuer's acknowledgement.

Section 4 – AGREEMENT TERM AND CONDITIONS

- I. Neither Phoenix Advisors nor any individual representing Phoenix Advisors possesses any authority with respect to any decision of the Issuer or any official of the Issuer beyond the rendition of information or advice. Phoenix Advisors is not legal counsel nor an accountant and is not providing legal or accounting guidance. None of the services contemplated in this Agreement shall be construed as legal services or a substitute for legal services. The Issuer hereby acknowledges its responsibility with respect to federal securities laws and represents its intention to comply in all respects with federal securities laws.
- II. This Agreement, as to continuing disclosure services and municipal advisory services, is subject to annual renewal, and may be terminated by either the Issuer or Phoenix Advisors upon thirty (30) days' prior written notice.
- III. This Agreement shall be construed in accordance with and governed by the laws of the State of New Jersey.

IN WITNESS WHEREOF, The Issuer and Phoenix Advisors has caused this Agreement to be duly executed by its authorized representative, as of the day and year first above written.

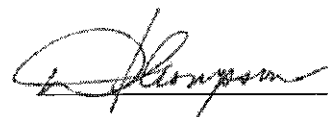
CLAYTON BOROUGH

By: _____

Name: Donna Nestore

Title: Chief Financial Officer

PHOENIX ADVISORS, LLC

By: _____

Name: David B. Thompson

Title: Chief Executive Officer