

**RESOLUTION AUTHORIZING EXECUTION OF A RETAINER AGREEMENT FOR  
LEGAL SERVICES IN RELATION TO STRAIGHT LEASE TRANSACTIONS  
BETWEEN THE RENSSELAER  
COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND ENTITIES RECEIVING  
FINANCIAL ASSISTANCE FROM THE AGENCY**

**WHEREAS**, the Rensselaer County Industrial Development Agency (the Agency) is desirous of retaining legal counsel for the purpose of representing the Agency in “straight lease” transactions between the Agency and various entities receiving “financial assistance” from the Agency; and

**WHEREAS**, such services are “professional services” as the same are contemplated by the Agency’s procurement policy; and

**WHEREAS**, Barclay Damon, LLC is known to have the necessary skills and professional expertise to provide such services in a competent, timely and cost efficient manner; and, is known to possess the required qualities of accountability, reliability, responsibility, skill, reputation, education and training, judgment, integrity and moral worth; and does not appear to have any known conflicts of interest; and

**WHEREAS**, the Agency and Barclay Damon, LLC are both desirous of executing a formal retainer agreement with respect to such services to be provided to the Agency, and Barclay Damon, LLC has submitted a proposed retainer agreement, a copy of which is attached hereto; and

**WHEREAS**, the execution of such an agreement with Barclay Damon, LLC is authorized and permitted under Section 4(A) of the procurement policy heretofore adopted by the Agency; now, therefore, be it

**RESOLVED**, that the Executive Director of the Agency shall be and hereby is authorized on behalf of the Agency to execute a retainer agreement for legal services with Barclay Damon, LLC, substantially as set forth in the attached retainer agreement, subject to the approval as to the form of such agreement by Agency Counsel.

**Resolution ADOPTED by the following vote:**

**Ayes:** 6

**Nays:** 0

**Abstain:** 0

**April 12, 2018**


STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF RENSSELAER            )

I, the undersigned (Assistant) Secretary of Rensselaer County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on April 12, 2018 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 12th day of April, 2018.

  
\_\_\_\_\_  
(Assistant) Secretary

(SEAL)

# BARCLAY DAMON <sup>LLP</sup>

## RETAINER AGREEMENT

1. **The Agreement.** This Retainer Agreement (“Agreement”) states the terms under which Barclay Damon LLP (we or “BD”) shall provide and Agency shall pay for legal services. For purposes of this Agreement, “Agency” means Rensselaer County Industrial Development Agency. BD represents only the Agency and does not represent its officers, directors or employees.
2. **Scope of Services.** BD shall provide legal services to Agency in connection with “straight lease” transactions between the Agency and various entities receiving “financial assistance” from the Agency (the “Matter”). BD also shall provide legal services related to certain specified economic development projects as requested by the Agency (the “Additional Economic Development Work”). BD and the Agency will enter into a separate retainer agreement with respect to such Additional Economic Development Work.
3. **Primary Attorney.** M. Cornelia (“Connie”) Cahill will be the attorney at BD who has primary responsibility for work on the Matter (“Primary Attorney”). The Primary Attorney may be reached at the following contact information: telephone (518) 429-4296, e-mail [mcahill@barclaydamon.com](mailto:mcahill@barclaydamon.com). The legal secretary for the Primary Attorney is Erin Kayser who may be reached at the following contact information: telephone (518) 429-4288, e-mail [ekayser@barclaydamon.com](mailto:ekayser@barclaydamon.com). The Primary Attorney may use other BD attorneys and non-attorney staff (such as paralegals) to do work on the Matter. BD reserves the right to change the Primary Attorney. Agency has the right, exercisable at any time, to require a change in the Primary Attorney and other attorneys and staff working on the Matter. BD also reserves the right to make changes to such personnel at any time.
4. **Agency Confidentiality.** BD will protect Agency confidences and secrets as required by law. Please use special care when communicating with BD via electronic mail or by cellular telephone because such methods of communication are not always secure and could lead to the inadvertent waiver of attorney-Agency privilege.
5. **Conflicts of Interest.** At this time, we are unaware of any matters involving the Firm that would prevent or limit us from serving the Agency or that would constitute actual or potential conflicts of interest or would risk the disclosure of confidential information or impingement of the duty of loyalty. However, in the interest of full disclosure, the Firm advises you that we are a full service law firm engaged in many different areas of practice. Thus, it is possible that issues may arise in connection with our representation of other clients that could put our Firm into a potential or actual conflict with the Agency. For example, we represent a several energy and utility clients which have operations and/or projects in Rensselaer County including, but not limited to National Grid and Buckeye Partners. It is possible that attorneys in our Energy, Project Development or Real Property Tax Practice Areas may at some future point(s) in time represent clients in connection with the request for financial assistance from the Agency as may be required for an existing or proposed development project. In that event, there would be a technical conflict of interest. Because of the nature of our practice, we believe that addressing this issue at this time is prudent.

In the event our Firm is engaged by the Agency and such other matters later emerge, we will do our utmost to achieve a resolution of those matters in an acceptable manner, including but not limited to the pursuit of a waiver from the other client. If we are unable to obtain a waiver, we will decline the engagement. However, we require that the Agency agree to an advance waiver for this limited category of practice upon our engagement.

6. **Fees.** The fees BD will charge for its services in connection with each "straight-lease" transaction will be billed to the entity receiving "financial assistance" from the Agency and will be payable on the date of the closing of such transaction. Our fees for "straight-lease" transactions typically average from \$17,500 - \$25,000 per transaction, plus disbursements. We will consult with the Agency in the event that, during the course of a straight lease transaction, we believe that our fee will exceed \$25,000. The fees that BD will charge for any Additional Work will be set forth in a separate retainer agreement between BD and the Agency.

7. **Records Retention.** We will endeavor to return original documents and records to you at the termination of the engagement. Records are kept for at least seven years. Please inquire of your attorney as to the specific time period that records of your engagement will be retained. Following the expiration of the retention period, records are destroyed by confidential means.

8. **Termination.**

(a) **By Agency.** Agency may terminate this engagement at any time for any reason by notifying BD in writing. Agency shall be responsible for outstanding invoices, for unbilled fees and expenses incurred before termination, and for fees and expenses in connection with an orderly transition of the Matter.

(b) **By BD.** BD may terminate this engagement at any time for any reason, including Agency's failure to pay BD's fees and expenses, provided, however, that BD's right to terminate is subject to the applicable rules of professional conduct and the rules of any court having jurisdiction of the Matter.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between BD and Agency as to the Matter and may be changed only by a written document, signed by both parties.

10. **Governing Law.** Any dispute arising under this Agreement shall be governed by the laws of the State of New York. Agency consents to the personal and subject matter jurisdiction of the Supreme Court of the State of New York in and for the County of Albany to resolve any such disputes.

11. **Additional Services.** BD is a full-service law firm with a wide array of expertise as described in the enclosed list of our Practice Groups. Please feel free to contact the Practice Group Chair about additional services offered by BD.

Thank you for allowing BD to be of service to you in connection with this engagement. If the terms of this Retainer Agreement meet with your approval, please so indicate by signing and returning the original. A counterpart of this Retainer Agreement is enclosed for your files.

RENSSELAER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY:

BARCLAY DAMON LLP

\_\_\_\_\_  
Robert L. Pasinella, Executive Director

By: *M. Cornelia Cahill*  
M. Cornelia Cahill

Dated: \_\_\_\_\_

Dated: 4/2/18

**BARCLAY DAMON<sup>LLP</sup>**  
**PRACTICE AREAS**

<u>Bankruptcy &amp; Creditors' Rights</u>		<u>Land Use &amp; Zoning</u>	
Beth Ann Bivona	(716) 858-3849	Jeffery D. Palumbo	(716) 858-3728
J. Eric Charlton	(315) 425-2716		
<u>Branding, Trademarks &amp; Copyrights</u>		<u>Lobbying &amp; Election Law Compliance</u>	
Jason S. Nardiello	(315) 425-2817	Yvonne E. Hennessey	(518) 429-4293
<u>Commercial Litigation</u>		<u>Mass &amp; Toxic Torts</u>	
Jon P. Devendorf	(315) 425-2724	Carol G. Snider	(716) 858-3782
Randolph C. Oppenheimer	(716) 858-3780	<u>Media &amp; First Amendment Law</u>	
<u>Construction &amp; Surety</u>		Joseph M. Finnerty	(716) 566-1471
James P. Domagalski	(716) 566-1510	<u>Patents &amp; Prosecution</u>	
<u>Corporate</u>		Peter J. Bilinski	(315) 425-2856
James J. Canfield	(315) 425-2763	<u>Professional Liability</u>	
Christopher T. Greene	(716) 858-3730	Thomas J. Drury	(716) 858-3845
<u>Energy</u>		<u>Project Development</u>	
Richard R. Capozza	(315) 425-2710	Kevin R. McAuliffe	(315) 425-2875
<u>Environmental</u>		<u>Public Finance</u>	
Frank V. Bifera	(518) 429-4224	M. Cornelia Cahill	(518) 429-4296
Yvonne E. Hennessey	(518) 429-4293	Susan Katzoff	
<u>Family &amp; Matrimonial Law</u>		<u>Real Estate</u>	
Christopher A. Cardillo	(716) 858-3881	Christopher J. Centore	(315) 425-2756
<u>Financial Institutions &amp; Lending</u>		<u>Real Property Tax &amp; Condemnation</u>	
Roger F. Cominsky	(716) 566-1413	Mark R. McNamara	(716) 566-1536
<u>Health Care Controversies</u>		<u>Regulatory</u>	
Linda J. Clark	(518) 429-4241	Maureen O. Helmer	(518) 429-4220
<u>Health Care &amp; Human Services</u>		Brenda D. Colella	(315) 425-2722
Susan A. Benz	(716) 858-3812	<u>Tax</u>	
Melissa M. Zambri	(518) 429-4229	Gerald F. Stack	(315) 425-2829
<u>Higher Ed</u>		<u>Telecommunications</u>	
Edward G. Melvin	(315) 425-2783	Jeffrey W. Davis	(315) 425-2823
<u>Insurance Coverage &amp; Regulation</u>		<u>Torts &amp; Products Liability Defense</u>	
Anthony J. Piazza	(585) 295-4420	Matthew J. Larkin	(315) 425-2805
<u>Intellectual Property Litigation</u>		<u>Trusts &amp; Estates</u>	
Douglas J. Nash	(315) 425-2828	Marcy Robinson Dembs	(315) 425-2740
<u>International Business</u>		Jennifer G. Flannery	(716) 858-3701
Richard J. Day	(716) 566-1422	<u>White Collar</u>	
Gust P. Pullman	(716) 858-3726	Daniel J. French	(315) 413-4050
<u>Labor &amp; Employment</u>		Gabriel M. Nugent	(315) 425-2836
Laurence B. Oppenheimer	(716) 566-1575		