

## INVESTMENT ADVISORY AGREEMENT

THIS AGREEMENT, entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between Cuyahoga County, Ohio (the "County" or "Client"), and PFM ASSET MANAGEMENT LLC, a Delaware limited liability company (hereinafter the "Advisor") with a principal office located at One Keystone Plaza, Suite 300, North Front & Market Streets, Harrisburg, PA 17101-2044.

### WITNESSETH

**WHEREAS**, the Client desires to avail itself of the experience, sources of information, advice, assistance and facilities available to the Advisor; to have the Advisor undertake certain duties and responsibilities; and to perform certain services as investment advisor on behalf of the Client, as provided herein; and

**WHEREAS**, the Advisor is willing to provide such services on the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, the parties hereto, intending to be legally bound, agreed as follows:

#### 1. SCOPE OF SERVICES

Under the direction of the County Treasurer or his designee, the Advisor will provide the following services:

**(a) Periodic Strategy Discussions** – The Advisor will provide periodic investment advice and assistance (through written reports, conference calls, and face-to-face meetings) to the County Treasurer, the County's Investment Advisory Committee and County staff. The frequency of the provision of such advice and assistance will be determined by the County Treasurer. The advice and assistance will cover the following topics related to the management of the Client's investment portfolio:

- i. market commentary,
- ii. review of macroeconomic trends,
- iii. review of spreads for various sectors,
- iv. asset allocation recommendations,
- v. assistance with cash flow analysis,
- vi. recommendations of target cash flow maturities by month from 1-12 months for the Client's short-term portfolio,

- vii. recommendations of targeted maturities between 1 and 5 years maturity considering market conditions and to match the Client's targeted duration for its long-term portfolio,
- viii. provision of specific strategic advice regarding security trades and management of the portfolio,
- ix. advice on proposed changes to state law that could result in improved investment performance or enhanced internal controls, and
- x. performance of periodic investment policy review and recommendations.

The Advisor will attend all regular quarterly meetings of the Investment Advisory Committee, and any special meetings, if necessary. The Advisor will be available by phone for meetings of the Working Group of the Investment Advisory Committee.

**(b) Broker/Dealer Relationship Management** – The Advisor will assist the Client with the following aspects of broker/dealer relationship management:

- i. establishing credit criteria (including different credit criteria based on the services to be used),
- ii. development of an effective process for solicitation of competitive bids/offers from approved broker/dealers,
- iii. developing strategies for the inclusion of minority broker/dealers and/or local broker/dealers, if requested,
- iv. researching any specific credit issues or issuers, and
- v. evaluating broker/dealer effectiveness.

**(c) Trade Execution** – If Client chooses to have Advisor provide trade execution services, the Advisor will place orders for the purchase, sale, loan or exchange of portfolio securities for the Client's account with brokers or dealers recommended by the Advisor and/or the Client. In connection with the selection of such brokers and dealers and the placing of such orders, the Advisor is directed to seek for the Client the most favorable execution and price, the determination of which may take into account, subject to any applicable laws, rules and regulations, whether statistical, research and other information or services have been or will be furnished to the Advisor by such brokers and dealers. The Advisor will observe the instructions of the Client with respect to broker/dealers who are approved to execute transactions and in the absence of such instructions will engage broker/dealers, which the Advisor reasonably believes to be reputable, qualified and financially sound.

The Advisor is authorized as agent of the Client to give instructions to the custodian designated by the Client (the "Custodian") as to deliveries of securities and payments of cash for the account of the Client. The Custodian shall have custody of cash, assets and securities of the Client. The Advisor shall not take possession of or act as custodian for the cash, securities or other assets of the Client and shall have no responsibility in connection therewith.

Authorized investments shall include only those investments which are currently authorized by the state investment statutes and applicable covenants, the Client's Investment Policy, and as supplemented by such other written instructions as may from time to time be provided by the Client to the Advisor.

In connection with the provision of the trade execution services, an authorized representative of the Client will provide instructions in writing or via electronic mail to the Advisor specifically granting prior authorization and power to enter into the associated securities transactions on the Client's behalf. The Advisor will send trade notifications to the Client as evidence of the trades being completed. The securities purchased by the Advisor for the Client are referred to herein as the "Managed Funds."

**(d) Training** – The Advisor will provide training session(s) to County staff at Advisor's or Client's site, as requested.

## **2. COMPENSATION.**

Fees related to the provisions of services described in the Agreement are as follows:

**(a) Base Fee** – The base annual fee for investment advisory services provided under the Agreement will be \$35,000. An additional fee described below in this subsection will apply, the amount of which will be based on the frequency of the investment strategy discussions. The Client may elect a different frequency each month to meet its needs. The monthly discussions fee will apply unless the Client chooses to have more frequent strategy discussions. The annual fee, to be invoiced monthly, for each level of service is:

- i. Monthly, \$20,000
- ii. Bi-Weekly, \$32,000
- iii. Weekly, \$40,000

The foregoing notwithstanding, the annual fees set forth above in this subsection (a) shall each be proportionately increased to reflect and correspond to the initial 15-month term of this Agreement.

**(b) Trade Execution** - The Client shall pay the Advisor an annual fee equal to 0.08% of assets, in monthly installments, based on the daily net assets of Managed Funds.

**(c) Training** – For each 3-hour training session provided by Advisor, the Client will pay a fixed fee of \$2,000. In addition, the Advisor shall be reimbursed for out-of-pocket expenses, including the expense of reasonable and necessary travel, meals and lodging incurred in the performance of training services. Should the training be performed in conjunction with a regularly scheduled quarterly meeting of the County Investment Advisory Committee, no travel expenses will be charged.

The total annual cost for investment advisory services to be provided under the Agreement for any 12- month period, including renewal terms pursuant to Section 5 hereof, but excluding training services and related expenses, will be capped at \$95,000; provided that, such cap for the initial 15-month term of this Agreement shall be proportionately increased . If services are provided for less than a one year period, this cap will be pro-rated.

### **3. REGISTERED ADVISOR; DUTY OF CARE.**

The Advisor hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940, as amended. The Advisor shall immediately notify the Client if at any time during the term of this Agreement it is not so registered or if its registration is suspended. The Advisor agrees to perform its duties and responsibilities under this Agreement with reasonable care. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith. Nothing herein shall in any way constitute a waiver or limitation of any rights which the Client may have under any federal securities laws. The Client hereby authorizes the Advisor to sign I.R.S. Form W-9 on behalf of the Client and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Agreement.

### **4. ADVISOR'S OTHER CLIENTS.**

The Client understands that the Advisor performs investment advisory services for various other clients which may include investment companies, commingled trust funds and/or individual portfolios. The Client agrees that the Advisor, in the exercise of its professional judgment, may

give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Managed Funds. The Advisor shall not have any obligation to purchase, sell or exchange any security for the Managed Funds solely by reason of the fact that the Advisor, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.

## **5. TERM.**

This Agreement shall commence on October 1, 2013 and shall have an initial term of 15 months, through December 31, 2014. The Agreement may be renewed for two (2) additional one-year periods, by mutual consent of the Client and the Advisor. This Agreement may be terminated by the Client in the event of any material breach of its terms immediately upon notice by certified mail, return receipt requested. This Agreement may be terminated by the Client at any time, on not less than thirty (30) days' written notice to the Advisor. The Advisor may terminate this Agreement immediately upon any material breach of its terms by the Client, or at any time after one year upon thirty (30) days' written notice to the Client.

## **6. FORCE MAJEURE.**

The Advisor shall have no liability for any losses arising out of the delays in performing or inability to perform the services which it renders under this Agreement which result from events beyond its control, including interruption of the business activities of the Advisor or other financial institutions due to acts of God, acts of governmental authority, acts of war, terrorism, civil insurrection, riots, labor difficulties, or any action or inaction of any carrier or utility, or mechanical or other malfunction.

## **7. DISCIPLINARY ACTIONS.**

The Advisor shall promptly give notice to the Client if the Advisor shall have been found to have violated any state or federal securities law or regulation in any final and unappealable judgment in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission or any other agency or department of the United States, any registered securities exchange, the Financial Industry Regulatory Authority, or any regulatory authority of any State based upon the performance of services as an investment advisor.

## **8. INDEPENDENT CONTRACTOR.**

The Advisor, its employees, officers and representatives shall not be deemed to be employees, agents (except as to the purchase or sale of securities described in Section 1), partners, servants, and/or joint ventures of the Client by virtue of this Agreement or any actions or services rendered under this Agreement.

## **9. INSURANCE.**

The Advisor shall procure, maintain and pay premiums for the insurance coverage and limits of liability outlined below with respect to products, services, work and/or operations performed in connection with this Agreement:

- a) Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For contractors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;

\$1,000,000 each employee for bodily injury by disease;

\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- b) Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;

\$1,000,000 personal & advertising injury;

\$2,000,000 general aggregate;

\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- c) Business Automobile Liability Insurance covering all non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- d) Professional Liability Insurance providing coverage for claims arising out of the provision of professional services with a limit of liability not less than:

\$1,000,000 per claim;

\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, (i) the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Agreement, or alternatively (ii) the contractor shall maintain full unknown prior acts coverage.

#### **Insurance Terms and Conditions**

The insurance policies of the Advisor required for this Agreement, with the exception of the Professional Liability Insurance and the Worker's Compensation Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

- i) Thirty (30) days prior notice of cancellation; and;
  - ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- a) The insurance required for this Agreement shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.

- b) These insurance provisions shall not affect or limit the liability of the Advisor stated elsewhere in this Agreement or as provided by law.
- c) The Advisor shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Agreement.
- d) The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.
- e) The Advisor shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Agreement.
- f) The Advisor shall not materially change any policy of insurance relied upon by the County in executing and delivering this Agreement.

## **10. INDEMNIFICATION**

The Advisor hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions of Advisor, including all of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by Advisor under any terms or provisions of this Agreement. The Advisor acknowledges that, as a political subdivision of the State of Ohio, the County does not indemnify any person or entity. The Advisor agrees that no provision of this Agreement or any other contract or agreement between the Advisor and the County may be interpreted to obligate the County to indemnify or defend the Advisor or any other party.

## **11. BOOKS.**

The Advisor shall maintain records of all transactions in Client's Managed Funds. The Advisor shall provide the Client with a monthly statement showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets held on the last business day of the month. The statement shall be in the format and manner that is mutually agreed upon by the Advisor and the Client.

## **12. THE ADVISOR'S BROCHURE AND BROCHURE SUPPLEMENT.**

The Advisor warrants that it has delivered to the Client prior to the execution of this Agreement the Advisor's current Securities and Exchange Commission Form ADV, Part 2A (brochure) and Part 2B (brochure supplement). The Client acknowledges receipt of such brochure and brochure supplement prior to the execution of this Agreement.

## **13. MODIFICATION.**

This Agreement shall not be changed, modified, terminated or discharged in whole or in part, except by an instrument in writing signed by both parties hereto, or their respective successors or assigns.

## **14. SUCCESSORS AND ASSIGNS.**

The provisions of this Agreement shall be binding on the Advisor and its successors and assigns, provided, however, that the rights and obligations of the Advisor may not be assigned without the consent of the Client.

## **15. NOTICE.**

Written notices required under this Agreement shall be sent by regular mail, certified mail, overnight delivery or courier, and shall be deemed given when received at the parties' respective addresses shown below. Either party must notify the other party in writing of a change in address.

### Client's Address

Cuyahoga County  
Whitlatch Building  
1910 Carnegie Ave., 1<sup>st</sup> Floor  
Cleveland, OH 44115  
Attn: County Treasurer

Advisor's Address

PFM Asset Management LLC  
One Keystone Plaza, Suite 300  
North Front & Market Streets  
Harrisburg, PA 17101-2044  
Attn: Barbara Fava

With copy to:

PFM Asset Management LLC  
Two Logan Square, Suite 1600  
18<sup>th</sup> & Arch Streets  
Philadelphia, PA 19103-2770  
Attn: Controller

**16. APPLICABLE LAW.**

This Agreement shall be construed, enforced, and administered according to the laws of the State of Ohio. The Advisor and the Client agree that, should a disagreement arise as to the terms or enforcement of any provision of this Agreement, each party will in good faith attempt to resolve said disagreement prior to filing a lawsuit.

**17. EXECUTION AND SEVERABILITY.**

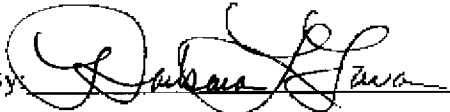
Each party to this Agreement represents and warrants that the person or persons signing this Agreement on behalf of such party is authorized and empowered to sign and deliver this Agreement for such party. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

**18. ELECTRONIC SIGNATURE**

THE ADVISOR AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL CONTRACT DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WERE MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. THE ADVISOR ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the date set forth in the first paragraph of this Agreement.

**PFM ASSET MANAGEMENT LLC**

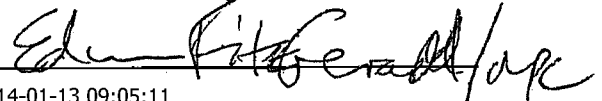
By: \_\_\_\_\_

Name: Barbara L. Fava

Title: Managing Director

**CUYAHOGA COUNTY, OHIO**

Edward FitzGerald, County Executive

By: \_\_\_\_\_

2014-01-13 09:05:11

Name: \_\_\_\_\_

Title: \_\_\_\_\_