

MEMORANDUM

June 16, 2015

TO: Honorable Mayor and City Commissioners

VIA: Kenneth Fields, City Manager

FROM: Dorothy Ecklund, Finance Director

RE: Legal Counsel – Series 2015

SYNOPSIS: Approval authorizes Bryant Miller Olive P.A. to provide professional services relating to debt issuance, not to exceed two million dollars.

STAFF RECOMMENDATION

It is recommended the City Commission consider the following action:

1. Approve the engagement letter for Bryant Miller Olive P.A.
2. Authorize the City Manager to execute the appropriate documents, on the City's behalf.

BACKGROUND

Due to several factors, 1) the draw down on reserves due to the economic downturn caused by the recession since 2007, 2) the settlement of the Lake Belle lawsuit, and the 3) numerous capital projects being completed/planned during 2014 through 2016 (C Street Project, Cemetery Project, Airport Project, extension of Hwy 60 utilities) staff has advised the Commission that short term debt issuance is necessary for these projects to stay on track for completion. Staff has recommended to the City Commission the issuances of debt, not to exceed two million dollars, for a twenty four month period.

On April 21, 2015, the City Commission selected the PFM Group to provide financial advisory services relating to this debt issuance. The Commission was advised that when the City issues debt, outside professional legal services are also necessary to insure compliance with IRS and state statutes. Staff recommended Bryant Miller Olive P.A. to provide these legal services.

FISCAL IMPACT

Bryant Miller Olive P.A. fee is not to exceed, \$14,000 for service, plus out of pocket costs \$1,500 (total possible costs \$15,500).

ATTACHMENT

Bryant Miller Olive P.A. Engagement Letter

ENGAGEMENT FOR NOTE COUNSEL SERVICES

BRYANT MILLER OLIVE P.A., a professional association organized under the laws of the State of Florida (the "Firm"), agrees to serve as Note Counsel to the CITY OF LAKE WALES, FLORIDA, a municipal corporation organized under the laws of the State of Florida (the "City") in connection with the issuance of the Capital Improvement Revenue Note, Series 2015 (the "Note"). The Services described herein will be rendered by George Smith and Monique Spotts, as co-lead counsel. Len Marcinko will provide all services related to federal tax issues. The Firm may include other members of the Firm, subject always to the approval of the City.

A. Upon request of the Finance Director or City Attorney, the Firm as Note Counsel will perform the following services with respect to the Note and matters relating thereto:

1. Review of proposed financing programs as to legal feasibility, compliance with applicable law and pending or proposed revisions to the law, including United States Treasury regulations.
2. Advice as to structuring procedures, required approvals and filings, schedule of events for timely debt issuance, and other legal matters relative to such debt.
3. Attend meetings with City staff, City Attorney and officials, the City's financial advisor, the purchaser of the Note (the "Purchaser") and others as appropriate for development of the debt materials or dissemination of information in connection therewith.
4. Prepare ordinances or resolutions and any amendments thereto in order to authorize the issuance of the Note.
5. Prepare or review the agreements necessary, related or incidental to the issuance of the Note.
6. Prepare, obtain, deliver and file all closing papers necessary in connection with the Note, including, but not limited to, certified copies of all minutes, ordinances, resolutions and orders; certificates such as officers, seal, incumbency, signature, and no prior pledge; and opinions from attorneys.
7. Render an opinion in written form at the time the Note is issued as Note Counsel to the City.

B. The Firm's duties as Note Counsel hereunder are limited to those expressly set forth herein and do not include the following:

1. Validation proceedings and post-closing reinvestment of Note proceeds.

2. Preparation of blue sky or investment surveys with respect to the Note, if applicable.

3. Investigation or expression of any view as to the creditworthiness of the City, any credit enhancement provider, or the debt instrument; or, providing services related to hedging or derivative financial products (e.g. "swaps" and related documents or opinions).

4. Representation of the City in post-closing regulatory investigation or matters.

5. Bankruptcy matters.

C. The City acknowledges that the Firm, as Note Counsel, assumes no responsibility for any disclosure documents or materials provided to or at the request of the Purchaser.

D. For the services described above, the City agrees that the Firm shall be compensated for Note Counsel services, at the time of closing, at a fee contingent on the closing of the Note in the amount of \$14,000, subject to the following:

1. In addition to the fee, the Firm shall be reimbursed for all routine or out-of-pocket expenses related to an issue. "Out-of-pocket expenses" includes but is not limited to local and long distance phone calls, postage, word processing, clerical or secretarial services, legal computer services, photographic copies, printing, overnight express mail, facsimile transmissions, exhibits, and transcripts. Out-of-pocket expenses do not include travel, which will not be reimbursed by the City.

2. The payment of the Firm's fee is completely contingent in all cases on the sale and delivery of the Note; however, the Firm will be reimbursed for its out-of-pocket expenses irrespective of the completion of the Note issue.

The Firm's fee described herein may vary: (1) if material changes in the structure or schedule of the financing occur; or (2) if unusual or unforeseen circumstances arise which require a significant increase in the Firm's time or responsibility. If, at any time, the Firm believes that circumstances require an adjustment of the fee described above, the Firm will advise the City and seek an adjustment based upon the relevant circumstances. Such adjustment will only be made by the City, in its sole discretion.

E. The rules regulating The Florida Bar provide that common representation of multiple parties is permissible where the clients are generally aligned in interest, even though there is some difference in interest among them. The Firm has disclosed to the City that it has, and may in the future, serve as bond or disclosure counsel to other local governments or otherwise act as underwriter's counsel on public finance matters in Florida. From time to time,

the Firm may represent the firms which may underwrite the City's bonds, notes or other obligations (and other financial institutions hired by the City) on financings for other governmental entities in Florida on unrelated matters. In either case, such representations are standard and customary within the industry and the Firm can effectively represent the City and the discharge of the Firm's professional responsibilities to the City will not be prejudiced as a result, either because such engagements will be sufficiently different or because the potential for such prejudice is remote and minor and outweighed by consideration that it is unlikely that advice given to the other client will be relevant in any respect to the subject matter, and the City expressly consents to such other representations consistent with the circumstances herein described. The City acknowledges and agrees that the Firm's role as bond counsel, disclosure counsel, or counsel to any local governmental entity or financial institution or in conjunction with public finance transactions is not likely to create or cause any actual conflict, and service as disclosure, bond, or counsel to other clients of the Firm will not per se be construed as a conflict or be objectionable to the City.

In addition, we must notify you that a shareholder of the firm, Randy Hanna, serves on the Board of Directors of Hancock Bank, which will be the Purchaser of the Note. While we do not believe this representation creates a conflict of interest, we must obtain the City's acknowledgement and waiver of any potential conflict and by execution hereof, the City expressly acknowledges and waives any such potential conflict.

F. Upon the closing of the Note, without notice, it will be presumed that the Firm's services on this transaction shall be complete, and the Firm will not be actively providing any services under Section A of this Agreement, until requested again by the Finance Director or the City Attorney.

G. The City may cancel or terminate this Agreement upon sixty days advance written notice to the Firm. In the event of cancellation, the Firm shall, unless otherwise requested by the City, immediately cease work hereunder and shall be reimbursed for eligible and documented reimbursable expenses incurred prior to the date of cancellation.

H. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be amended only by a writing duly entered into by the City and the Firm.

DATED this 2nd day of June, 2015.

BRYANT MILLER OLIVE P.A.

Monique Spotts

Monique R. Spotts, Esq.

CITY OF LAKE WALES, FLORIDA

City Manager