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MEMORANDUM

To: Mayor and City Council

From: Brian Anderson, City Attorney

Date: August 22, 2011

Subject: Appointment of City Bond Counsel

ITEM DESCRIPTION

Recommendation of the City Attorney to Award Purchasing Contract 11-05 (Bond Counsel Services) to Miller & Martin, PLLC.

BACKGROUND

The resources and expertise of bond counsel are needed as the City considers issuing bonds. The City issued a Request for Proposals to identify qualified law firms recognized in the practice of municipal finance or public securities and tax law to serve as the City's bond and disclosure counsel for the issuance of bonds and other debt instruments, and to provide assistance in revising any City bond resolution(s) as required. Prior to appointment by Council, the City has been using the services of temporary bond counsel until a permanent firm was identified.

The firm selected to provide bond and disclosure counsel services will be required to perform all services and duties customarily and usually performed by bond and disclosure counsel preliminary to and accompanying the rendering of an approving opinion as to the legality and tax exempt status of City bonds or other debt instruments. Counsel's role goes beyond helping to ensure a successful bond placement. Counsel will be a valuable resource to the City, providing services that include:

- Advise as to procedures, required approvals and filings, schedule of events for timely issuance, potential cost-saving techniques and other legal matters relative to issuance of the bonds or other debt instruments, whether the financing is undertaken by competitive bid or negotiated sale;
- Attend conferences of City officials, staff members, City's financial advisor, rating agencies, and if a negotiated sale is undertaken, representatives of the selected underwriters, when so requested;
- Prepare an appropriate resolution and any amendments thereto in order to authorize the issuance of the bonds or other debt instruments;

- Prepare any amendments or supplements to the City's bond resolution(s), and prepare trustee, registrar or paying agent agreements or similar documents necessary or desirable in connection with the financing;
- If sale is by competitive bid, assist in preparation of the bid documents, notice of sale, and any other documentation or action necessary to conduct a sale of the bonds in that manner;
- If sale is negotiated, preparation of the bond purchase agreement and preparation of any other documentation or action necessary to conduct a sale in that manner;
- Preparation of the preliminary official statement and official statement and preparation of the award resolution, and any amendments thereto, for the sale of the bonds;
- Prepare, obtain, deliver and file all closing papers necessary in connection with the sale and issuance of the bonds or other debt instruments;
- Provide bound and electronic copies of the closing documents in the number requested by the City;
- Issue standard, comprehensive bond counsel opinions as to the legality of the bonds or other debt instruments, the security for their payment and the exemption from federal income taxation of the interest on the bonds, as well as the customary 10b-5 opinion as to certain information contained in the official statements; and
- Prepare documentation in connection with any public hearing and approval process related to the issuance of debt by the City.
- Serve as a member of the City's financing team. Attend meetings and participate in conference calls of the City and its committees, when so requested.
- Review or prepare, as directed by the City Attorney, all pleadings for filing in the validation proceedings, if any.
- Review the transcript of all proceedings in connection with the foregoing and indicate any necessary corrective action.
- Advise the City with respect to matters concerning its outstanding senior lien bonds, subordinate debt, other parity indebtedness, and any other financial matters requested by the City.
- Assist the City in the evaluation and implementation or termination of interest rate swaps, derivative financial products, or other credit support or credit enhancement products.
- Provide assistance with amendments to any bond resolution(s) as required.

- Advise the financing team as to tax matters relative to issuance of debt instruments and determination of tax status of project (e.g. AMT, Non-AMT or Taxable).
- Assist the City in complying with applicable Federal and State tax laws and regulations.
- Provide general advice and consultation to the City and its financing team related to tax issues.

The selected firm will also work to keep the Council educated and well-informed throughout the bond process.

EVALUATION

The City received responses to our request from the following firms (in alphabetical order):

- Gray & Pannell
- Hunton & Williams
- Jones, Cork & Miller
- McKenna, Long & Aldridge
- Miller & Martin
- Murray, Barnes & Finister
- Peck, Shaffer, & Williams
- Schiff Hardin
- Smith, Gambrell, & Russell

The RFP review team (Chris Pike, Morgan Keegan, and I) reviewed each of the proposals and was incredibly impressed with the talent interested in providing bond counsel services. After reviewing each of the proposals, the review team agreed to shortlist and interview firms to determine both the ability to provide the services required and to identify the firm(s) best suited to be a partner with the City during our initial bond process. Consideration was given both to technical skills and overall best fit with the culture and personality of the City and Council. Pricing was also discussed during the interviews. Each proposal presented their firms and lead advisor with the strengths that would benefit the City. The review team concluded the City would benefit from any of the shortlisted firms. Costs were about the same for the two firms ranked highest and more expensive for the third-ranked firm. The review team shortlisted the following firms:

1. Miller & Martin (Jim Woodward)
2. McKenna, Long & Aldridge (Tom Lauth)
3. Murray, Barnes & Finister (Terri Finister)

The review team concluded that all three firms would completely meet the needs of the City for our planned debt issuances. Even more so, the team felt the personality of Jim Woodward, as well as the dedication mentioned by his clients during reference checks, would be the best match for the City. Also, Miller & Martin's fees were the most competitive of the three firms (to be negotiated, but estimated around \$35,000 for one of the proposed bond issuances following November's referendum.)

ALTERNATIVES

Council could choose to reject the recommendation of Staff and assign an alternative ranking or could deny all proposals and instruct Staff to release another request for proposals. It is Staff's opinion though that releasing another request for proposals would not provide a better selection or pricing.

RECOMMENDED ACTION

It is respectfully requested that Council approve to: (1) accept the recommendation of Staff to award Purchasing Contract 11-05 (Bond and Disclosure Counsel Services) to Miller & Martin, PLLC.; (2) authorize Staff to negotiate a contract with the highest ranked proposer; and (3) execute the necessary documents following satisfactory review by Staff and legal counsel.