

**CITY OF SANIBEL
RESOLUTION 13-036**

A RESOLUTION APPROVING AN AGREEMENT FOR BOND COUNSEL SERVICES WITH THE LAW FIRM OF BRYANT MILLER OLIVE P.A.; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the law firm of Bryant Miller Olive, P.A. has served as the City's Bond Counsel and has provided excellent legal services to the City with respect to municipal bond matters, municipal financing and other matter related to municipal functions and services; and

WHEREAS, law firm of Bryant Miller Oliver, P.A. is highly regarded within the State of Florida for it's municipal bond expertise, related municipal finance expertise and expertise in other matters of municipal functions and services; and

WHEREAS, although the City currently has no plans for the issuance of municipal bonds, it is the recommendation of the City Attorney that an agreement for Bond Counsel Services be entered into in the event that services of Bryant Miller Olive, P.A. are necessary at any time in the future;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sanibel:

SECTION 1. The Agreement for Bond Counsel Services with the law firm of Bryant Miller Olive, P. A., copy of which is attached hereto and incorporated herein in Exhibit A, is hereby approved.

SECTION 2. Effective date.

This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel,
Florida, this 7th day of May, 2013.

AUTHENTICATION:

Kevin Ruane, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM: *Kenneth B. Cuyler* *4/29/13*
Kenneth B. Cuyler City Attorney Date

Vote of Council members:

Ruane _____
Congress _____
Denham _____
Harrity _____
Jennings _____

Date filed with City Clerk: _____

AGREEMENT FOR BOND COUNSEL SERVICES

BRYANT MILLER OLIVE P.A., a professional association organized under the laws of the State of Florida, with offices in Tampa, Tallahassee, Orlando, Jacksonville, Miami, St. Petersburg, Atlanta, Georgia and Washington D.C. (the "Firm"), agrees to serve as Bond Counsel to the CITY OF SANIBEL, FLORIDA, a municipal corporation organized under the laws of the State of Florida together with any other entities created, in whole or in part, by the City of Sanibel, Florida (collectively, the "City").

A. The Firm as Bond Counsel will, when requested by the City, perform the following services with respect to the issuance of bonds and notes (including conduit bonds or notes where the City serves as the conduit issuer), 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 City's engineers, the underwriters 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 debt.
5. Prepare or review the trust indentures, loan agreements, escrow agreements, and any other agreements or similar documents necessary, related or incidental to any financing.
6. Prepare all validation pleadings including complaint, notice of service, proposed answer, memorandum of law, and proposed order and to be in attendance to assist with validation proceedings.
7. If sale is by competitive bid, assist in preparation of the bid comments, notice of sale, evaluation of bids and any other documentation or action necessary to conduct a sale of the bonds in that manner.
8. Review the transcripts of all proceedings in connection with the foregoing and indicate any necessary corrective action.
9. Prepare, obtain, deliver and file all closing papers necessary in connection with any debt, including, but not limited to, certified copies of all minutes, ordinances, resolutions and orders; certificates such as officers, seal, incumbency, signature, no prior pledge; and verifications, consents and opinions from accountants, engineers, special consultants and attorneys.

10. Review all disclosure documents prepared and authorized by the City, but only insofar as such documents describe the bonds and summarize the underlying documents. However, we assume no responsibility for the disclosure documents insofar as such documents describe the financial circumstances of the offering or any other statistics, projections or data. Furthermore, we assume no responsibility for ensuring qualification of the bonds for sale under the "blue-sky" laws of any jurisdiction.

11. Render an opinion in written form at the time such transactions are closed as bond counsel to the City.

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

1. Bond validation proceedings and post-closing reinvestment of bond proceeds.
2. Preparation of blue sky or investment surveys with respect to the bonds, notes or other obligations.
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. For the service described above, the City agrees that the Firm shall be compensated for Bond Counsel services, at the time the bonds or notes are issued, at a contingent fee equal to the greater of either \$2.00 per \$1,000 of the bonds or notes issued, or \$22,500; such fee is completely contingent on the issuance of the bonds or notes.

D. The Firm shall also be available to assist the City for hourly rate services unrelated to the specific issuance of a new debt or the provision of other extraordinary legal service identified and agreed by the City and the Firm; such services shall be performed at a rate of \$225 per hour upon the request of the City. Invoices to the City for hourly legal services unrelated to specific issuance of a new debt shall be itemized and shall set forth the attorney or paralegal, subject of the charge, the time applicable to the charge and the rate per hour. Upon mutual agreement, the City and the Firm may alternatively agree to a negotiated fee structure for services unrelated to the specific issuance of a new debt.

E. It is understood and agreed by the parties that the City will reimburse the Firm for reasonable out-of-pocket expenses, as permitted by law, whether or not bonds or debt is ultimately issued.

F. This Agreement will be effective for a term of five years from its date of execution, and upon all payments having been made hereunder; unless sooner terminated by either the City or the Firm.

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. 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.

I. Upon the closing of a bond transaction, without notice, it will be presumed that the Firm's services on that 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.

J. 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 ____ day of _____ 2013.

CITY OF SANIBEL, FLORIDA

(SEAL)

By: _____
Kevin Ruane, Mayor

ATTEST:

Pamela Smith, City Clerk

APPROVED AS TO FORM:


Kenneth B. Cuyler, City Attorney

BRYANT MILLER OLIVE P.A.

Authorized Signatory

Printed Name