

CITY OF MARCO ISLAND AGREEMENT #2020-018 FOR BOND COUNSEL (Piggyback Competitive Award)

This Agreement is made this 16th day of March, 2020 ("Effective Date") between the City of Marco Island, a municipal corporation organized and existing under the laws of the State of Florida and whose address 50 Bald Eagle Drive, Marco Island, Florida 34145 (the "City"), and Bryant Miller Olive P.A. whose address is 101 North Monroe Street, Suite 900, Tallahassee, Florida 32301 (the "Consultant").

WITNESSETH

WHEREAS, the City wishes to enter into an agreement with Consultant to serve on an as needed basis as bond counsel and special public finance counsel to the City; and

WHEREAS, the parties wish to incorporate the terms and conditions of the solicitation and contractual arrangement between the City of St. Petersburg, Florida and the Consultant titled Request for Proposal No. 3122 Bond Counsel Services and resulting agreement dated April 21, 2017 attached hereto and incorporated herein as Exhibit "A-1" ("St. Petersburg Contract"); and

WHEREAS, the City Code authorizes the City to select and contract through the use of the competitive bid process of another government entity as an exception to the otherwise required formal bidding process.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Contract Terms. The Consultant agrees to provide the City the Services as set forth in the St. Petersburg Contract, which terms are incorporated into this Agreement for all purposes and represent the entire agreement between the parties except for those modifications made herein. In the event of conflict between or among this Agreement and the terms and conditions of the St. Petersburg Contract, the order of priority shall be: this Agreement, and the St. Petersburg Contract. This Agreement shall expire simultaneously with any earlier termination of the St. Petersburg Contract. Except as modified below, the same terms and conditions that apply in the St. Petersburg Contract, shall apply to this Agreement.

The following additional provisions are included:

- A. The "City of Marco Island" shall be deemed substituted for the "City of St. Petersburg" with regard to any and all provisions of the St. Petersburg Contract, which is

incorporated herein by reference, including by example and not limitation, with regard to insurance, indemnification, licensing, termination, default and ownership of documents.

- B. The St. Petersburg Contract is amended to include and incorporate the attached Exhibit "B-1" and the fees set forth therein. The fees set forth in the attached Exhibit "B-1" shall supersede the fees in the St. Petersburg Contract.
- C. Invoices for satisfactory services rendered and accepted by the City shall be sent to:

Via email: accountspayable@cityofmarcoisland.com
Attn: Guillermo Polanco
Finance Director
City of Marco Island
50 Bald Eagle Drive
Marco Island, FL 34145

D. Public Records.

1. Consultant agrees to keep and maintain public records in Consultant's possession or control in connection with Consultant's performance under this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.
2. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to City.
3. Upon request from City custodian of public records, Consultant shall provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City.
5. Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of Consultant or keep and maintain public records required by City to perform the service. If Consultant transfers all public records to City upon completion of this Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of this Agreement, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically by Consultant shall be delivered to City, upon request from the City's Custodian of Records, in a format that is compatible with the City's information technology systems.

6. Any compensation due to Consultant shall be withheld until all records are received as provided herein.
7. Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by City.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Public Records: LAURA LITZAN, CITY CLERK
Mailing address: 50 Bald Eagle Drive, Marco Island, FL 34145
Telephone number: 239-389-5010
Email: llitzan@cityofmarcoisland.com

- E. **Termination.** Either Party may terminate this Agreement with or without cause, upon 30 days' written notice to the other Party. Upon receipt of the City's written notice of termination, Consultant shall stop all work on behalf of the City unless directed otherwise in writing by the City Manager. In the event of termination, the City shall be obligated to pay Consultant only for approved fees and costs incurred by Consultant prior to the date of termination.
- F. In the event of any dispute arising out of or relating to this Retainer Agreement, the parties agree that venue shall lie in Collier County, Florida.

Section 2. Notice. Notice under this Contract shall be given by certified mail as follows:

TO CITY: Guillermo Polanco
Finance Director
City of Marco Island
50 Bald Eagle Drive
Marco Island, FL 34145
gpolanco@cityofmarcoisland.com

WITH COPIES TO: Alan Gabriel, City Attorney
200 East Broward Blvd., Suite 1900
Fort Lauderdale, FL 33301
AGabriel@wsh-law.com

TO CONSULTANT: Duane D. Draper
Bryant Miller Olive P.A.
201 North Franklin Street, Suite 2700
Tampa, FL 33602
ddraper@bمولaw.com

Section 3. Certificates of Insurance. Prior to Consultant's commencement of services pursuant to the Marco Island Contract, Consultant shall deliver to the City, in a form acceptable to the City in its sole discretion, the following documents within 15 days of execution of the Marco Island Contract:

- All required certificates of insurance as described in the St. Petersburg Contract.

Section 4. Severability. This Agreement sets forth the entire agreement between Consultant and the City with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. This Agreement may not be modified except by the parties' mutual agreement set forth in writing and signed by the parties.

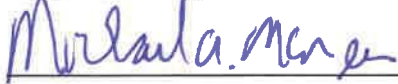
Section 5. Waiver of Jury Trial. The City and Consultant knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in state and or federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Agreement and/ arising out of, under, or in connection with the services performed hereunder, or any course of conduct, course of dealing, statements or actions or inactions of any party hereto.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year first above written.

CITY:

CITY OF MARCO ISLAND



Michael McNeese, City Manager

BRYANT MILLER OLIVE P.A.



Duane D. Draper, Shareholder

Date: 3-19-20

Date: 3/16/2020

Attest: 
Laura Litzan, City Clerk

RU
3.13.2020

APPROVED AS TO FORM:



Alan L. Gabriel, City Attorney

BOND COUNSEL RETAINER AGREEMENT

By and Between

**CITY OF ST. PETERSBURG, FLORIDA
and
BRYANT MILLER OLIVE P.A.**

BOND COUNSEL RETAINER AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
1. RETAINER AGREEMENT	1
2. BOND COUNSEL SERVICES	1
3. SPECIAL PUBLIC FINANCE AND/OR SPECIAL COUNSEL SERVICES	4
4. DISCLOSURE	5
5. CONTRACT ADMINISTRATION	5
6. GENERAL	5

BOND COUNSEL RETAINER AGREEMENT

THIS BOND COUNSEL RETAINER AGREEMENT (the "Retainer Agreement") is entered into by and between the City of St. Petersburg, Florida (the "City") and the law firm of Bryant Miller Olive P.A. (the "Firm") as of the 21st day of April, 2017.

WHEREAS, the Firm and its members have a local and statewide presence, have provided, and continue to provide bond counsel, disclosure counsel and special public finance and/or special counsel services to local governments throughout Florida; and

WHEREAS, the City and the Firm desire to document and memorialize that the Firm shall be available to serve on an as needed basis as bond counsel and/or special public finance and/or special counsel to the City; and

WHEREAS, the City and the Firm desire to respectively receive and provide legal services specifically described herein pursuant to this Retainer Agreement.

NOW, THEREFORE, it is agreed as follows:

1. RETAINER AGREEMENT. This Retainer Agreement shall supersede any prior agreements between the parties concerning the provision of bond counsel and special public finance and/or special counsel legal services.

2. BOND COUNSEL SERVICES.

(A) The Firm as bond counsel will, when requested by the City, perform the following services with respect to City financings including without limitation bonds, loans, subject to annual appropriation lease-purchase agreements, interlocal financing agreements, notes or other obligations of the City, 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 and/or resolutions and any amendments thereto in order to authorize the debt;

(5) prepare or review the trust indentures, loan agreements, escrow agreements, subject to annual appropriation lease-purchase agreements, and any other agreements or similar documents necessary, related or incidental to any financing;

(6) assist the City Attorney in the preparation of all validation pleadings, including complaint, notice of service, proposed answer, memorandum of law, and proposed order and to be in attendance to assist with any validation proceeding;

(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, the Firm shall assume no responsibility for (a) the disclosure documents insofar as such documents describe the financial circumstances of the offering or any other statistics, projections or data, or (b) for ensuring qualification of the bonds for sale under the "blue-sky" laws or jurisdiction; and

(11) subject to the completion of proceedings to the Firm's satisfaction, render a legal opinion regarding the validity and binding effect of the bonds, the source of payment and security for the bonds, and the excludability of interest on the bonds from gross income for federal income tax purposes.

(B) The Firm's duties as bond counsel in this engagement are limited to those expressly set forth herein and do not include:

(1) except as described above, assisting in the preparation or review of an official statement, if any, or any other disclosure document with respect to the bonds, or performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document or rendering advice that the official statement or other disclosure document does not contain any untrue statement of a material fact or omit to state a

material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading;

- (2) preparing requests for tax rulings from the Internal Revenue Service;
- (3) preparing "blue sky" or investment surveys with respect to the bonds;
- (4) drafting state constitutional or legislative amendments;
- (5) pursuing test cases or other litigation, such as contested validation proceedings, except as set forth above;
- (6) making an investigation or expressing any view as to the creditworthiness of the City, any credit enhancement provider, or the bonds;
- (7) providing services related to derivative financial products (e.g. 'swaps' and related documents or opinions);
- (8) assisting in the preparation of, or opining on, a continuing disclosure undertaking pertaining to the bonds or, after closing, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking;
- (9) representing the issuer in Internal Revenue Service examinations or inquiries, or Securities and Exchange Commission investigations;
- (10) after closing, monitoring the issuer concerning any actions that could cause interest paid on the bonds to be included in gross income for federal income tax purposes;
- (11) provide bankruptcy legal services; or
- (12) addressing any other matter not specifically set forth above that is not required to render the Firm's bond opinion.

The Firm's opinions will be based on facts and law existing as of its date. In rendering an opinion, the Firm will rely on the certified proceedings and other certifications of public officials, officers of the City and other persons furnished to the Firm without undertaking to verify the same by independent investigation, and the Firm will assume continuing compliance by the City with applicable laws relating to the bonds. The Firm will rely on the City to provide complete and timely information on all developments pertaining to any aspect of the bonds, the use of proceeds of the bonds, and the security for the bonds.

(C) For the services described above (other than routine validation procedures and related appeals, post-closing matters, and other hourly matters), the City agrees that the Firm

shall be compensated for bond counsel services, at the time the financing closes based on the transactional fees set forth in Exhibit A ("Fees").

(D) The Firm's Fees may vary up or down: (1) if material changes in the size, 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 Fees, 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. The City shall not be required to pay any increase in the Fees unless otherwise agreed to by the City in writing. Any adjustment may be approved by the City Attorney.

(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 notes are ultimately issued. Such reimbursement will be for actual costs incurred, such as computer printing or photocopies, long distance telephone charges, overnight delivery charges, and travel expenses. Applicable travel expenses will be reimbursed in accordance with Section 112.061, Florida Statutes, or such other schedule of reimbursement specified by the City and agreed to by the Firm.

3. SPECIAL PUBLIC FINANCE AND/OR SPECIAL COUNSEL SERVICES.

(A) The Firm shall also be available to provide legal services as special public finance and/or special counsel to the City for public finance or non-public finance matters unrelated to specific financings as a complement and supplement to the services generally provided by the City Attorney's Office. Special public finance and/or special counsel legal services and assistance outside the scope of City Attorney's services, only when required and as specifically authorized, may be provided on an hourly fee basis, for the provision of other legal services of a specialized nature which the Firm may possess and are desired and specifically requested by the City.

(B) The provision of special public finance and/or special counsel legal services shall be conditioned upon a scope of services as directed or authorized by the City Attorney in writing.

(C) Subject to any not-to-exceed amount of fees and/or costs and expenses established by the City Attorney in writing, the Firm will be compensated for special public finance and/or special counsel legal services at the hourly rates set forth in Exhibit A.

(D) Subject to any not-to-exceed amount of fees and/or costs and expenses established by the City Attorney in writing, the Firm shall also be entitled to receive reimbursement for actual costs incurred, such as computer printing or photocopies, long distance telephone charges, overnight delivery charges, and travel expenses. Applicable travel

expenses will be reimbursed in accordance with Section 112.061, Florida Statutes, or such other schedule of reimbursement specified by the City and agreed to by the Firm.

4. **DISCLOSURE.** The Firm has disclosed to the City that it currently serves as bond counsel, disclosure counsel or special public finance and/or special counsel to other local governments inside and outside of Florida. From time to time, the Firm may represent the firms which may underwrite the City's bonds (or loan money to the City and other financial institutions hired by the City) on financings for other local governments on unrelated matters. The Firm represents that, 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 and based on the foregoing representations made by the Firm. Accordingly, the City acknowledges and agrees that the Firm's role as bond counsel, disclosure counsel, underwriter's counsel or lender's counsel on any other local government's public finance transactions is not likely to create or cause any actual conflict, and service as disclosure, bond, underwriter's or lender's counsel to other Firm clients will not per se be construed as a conflict or be objectionable to the City. However, the City reserves the right to identify a representation that if finds objectionable in the future, in which case, the Firm agrees to take appropriate steps to resolve the City's concerns.

5. **CONTRACT ADMINISTRATION.**

(A) For ease and convenience of administration, the City hereby also designates its City Attorney to provide policy direction and instructions to the Firm in the administration of its duties hereunder, approving and authorizing work orders, when required, and all other matters necessary to administer this Retainer Agreement on behalf of the City.

(B) The Firm shall be entitled to reasonably rely upon direction received from the City Attorney and/or the Finance Director.

6. **GENERAL.**

(A) This Retainer Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of any dispute arising out of or relating to this Retainer Agreement, the parties agree that venue shall lie in Pinellas County, Florida. This Retainer Agreement may be amended only by a written agreement entered into by the parties.

(B) This Retainer Agreement may be terminated without cause by the City at any time upon thirty (30) days written notice or by the Firm at any time upon one hundred twenty (120) days written notice. In the event of termination, the Firm shall be responsible for

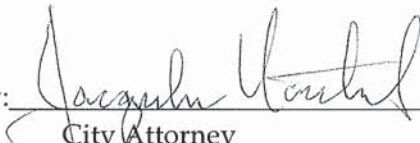
completing any work it has commenced, unless relieved of that responsibility in writing by the City Attorney, and shall be compensated for all work performed prior to the notice of termination and any continuing work performed thereafter with the authorization of the City Attorney. Provided however, the City may immediately terminate this Retainer Agreement for breach by the Firm after providing the Firm with written notice. In the event of termination, with or without cause, the Firm shall be compensated in accordance herewith for approved time and expenses expended prior to the date of termination.

(C) This Retainer Agreement may be executed in multiple counterparts.

(D) This Retainer Agreement shall be effective on the date first written above.

IN WITNESS WHEREOF, the City and the Firm have caused this Bond Counsel Retainer Agreement to be executed as of the dates below and effective as of the day first above written.

CITY OF ST. PETERSBURG, FLORIDA

By: 
City Attorney
Date: 4/21/17

BRYANT MILLER OLIVE P.A.

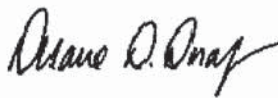
By: 
Shareholder and Authorized Signatory
Date: 4/21/17

EXHIBIT A

FEES

Transactional Fees

Bank Loan New Money (Contingent):
\$1.25 per \$1,000 of par amount of the debt

Bank Loan Refunding (Contingent):
\$1.30 per \$1,000 of par amount of the debt

Public Offering New Money (Contingent):
\$1.35 per \$1,000 of par amount of the debt

Public Offering Refunding (Contingent):
\$1.40 per \$1,000 of par amount of the debt

1. The fee formula for a taxable transaction will be 90% of the fee formula for a tax-exempt transaction.
2. Maximum fee is \$125,000 for any transaction. The minimum fee is \$22,500 for any transaction.
3. Separate series are treated as one series, only if all such series close on same date.
4. The above transactional fees excludes hourly work for bond referendums and bond validations, which are charged in addition.

Hourly Fees

The Firm does not expect to ever bill the City for routine questions and discussions, in-between bond transactions. The Firm views this as a way to work within the City's very limited outside counsel legal budget, and promotes extensive communication which puts us in a much better starting place when a transaction starts to happen. If there is a significant public finance engagement unrelated to a particular financing, the Firm will bill for hourly work. Prior examples include:

1. Bond referendum work
2. Bond validation work, including appeals
3. Review of State Revolving Fund loan agreement and documentation
4. Legal analysis of options to implementing a PACE program
5. Special assessment work

Also, the City may also choose to access non-public finance lawyers in the Firm to do non-public finance legal work for the City, on occasion.

1. The Firm's hourly fees are as follows: \$325 (for senior lawyers) and \$200 (for associates), to be billed monthly.

2. The Firm will also charge \$125 per hour for paralegal or legal assistant hourly work in certain instances, which may allow us to reduce costs by not doing that work using attorneys.

EXHIBIT B-1

Transactional Fees

Public Offering Issues (Contingent):

\$1.15 per \$1,000 of par amount of the debt (subject to a minimum fee of \$15,000)

Privately Placed Bank Loan (Contingent):

80% of the Bond Counsel Fee set forth above (subject to a minimum of \$15,000)

1. Separate series are treated as one series, only if all such series close on same date.
2. The above transactional fees excludes hourly work for bond referendums and bond validations, which are charged in addition.

Hourly Fees

1. \$325 per hour (for senior lawyers)
2. \$200 per hour (for associates)
3. \$125 per hour for paralegal or legal assistant hourly work in certain instances, which may allow us to reduce costs by not doing that work using attorneys

Expenses

In addition to our fees, the Firm will be reimbursed for all expenses made or incurred in connection with either transactions or hourly work. Such costs generally include travel costs, photocopying, document printing, deliveries, long distance telephone charges, telecopier charges, filing fees, computer-assisted research and other expenses. Expenses on bond issues would include transcript preparation following a bond transaction. Detailed supporting documentation is available upon request for statement billings.