

RESOLUTION NO. 2024-3307

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING THE ENGAGEMENT WITH BRYANT MILLER OLIVE P.A. AS BOND COUNSEL FOR THE UNDERGROUNDING PROJECT; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) Commission wishes to engage the firm of **Bryant Miller Olive P.A.** (the “Bond Counsel”) and, to the extent applicable, Disclosure Counsel, in connection with the Issuance of Bonds to fund the undergrounding of utilities (e.g., Electric, Phone and Cable) Town-wide; and

WHEREAS, the Bond Counsel has provided the Town with a proposed Engagement Agreement Letter attached hereto as Exhibit “A” (the “Agreement”); and

WHEREAS, the Town Commission seeks to approve the Agreement with the Bond Counsel in substantially the form attached hereto as Exhibit “A”; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest of the health, safety, and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval. That the Town Commission approves the Agreement in substantially the form attached hereto as Exhibit “A,” together with such changes as may be acceptable to the Town Manager, Town Mayor and Town Attorney.

Section 3. Authorization. The Town Manager is hereby authorized to execute the Agreement, subject to approval by the Town Attorney as to form, content, and legal sufficiency.

Section 4. Implementation. The Town Manager and/or designee are authorized to expend budgeted funds and take all action necessary to implement the purposes of this Resolution and the Agreement.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

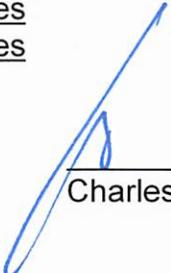
PASSED AND ADOPTED this 13th day of August, 2024.

Motion By: Commissioner Velasquez

Second By: Commissioner Coto

FINAL VOTE ON ADOPTION:

Commissioner Ruben A. Coto	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Commissioner Gerardo Vildostegui	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>

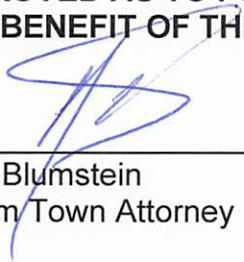


Charles W. Burkett, Mayor

ATTEST:

Sandra N. McCready, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Mark Blumstein
Interim Town Attorney

EXHIBIT "A"
Engagement Agreement Letter

July 26, 2024

Mark Blumstein, Esq.
Town Attorney
Town of Surfside, Florida
9293 Harding Avenue
Surfside, FL 33154

Re: Town of Surfside, Florida
General Obligation Bonds

Dear Mr. Blumstein:

The purpose of this letter is to advise you of the services Bryant Miller Olive P.A. (the "Firm") would perform as Bond Counsel and, if requested Disclosure Counsel, in connection with the issuance of the above-referenced bond issue (the "Bonds") to be issued by the Town of Surfside, Florida (the "Town"). We understand that the Bonds are being issued for the purpose of constructing of undergrounding utilities and are to be secured by voter approved ad valorem taxes. The approved referendum amount was not to exceed \$40,000,000 and the bonds are expected to be issued in one or more series.

SCOPE OF ENGAGEMENT

Bond Counsel. In this transaction, as Bond Counsel, we expect to perform the following duties:

Review of proposed financing program as to legal feasibility, compliance with applicable law and pending or proposed revisions to the law including United States tax law.

Advise as to structuring procedures, required approvals and filings, schedule of events for timely debt issuance, and other legal matters relative to the Bonds.

Attend meetings with Town staff and public officials of the Town, the Town Attorney, the Town's financial advisor, the underwriter (or lender) and its counsel, and others as appropriate for development of the plan of finance and the financing documents and dissemination of information in connection therewith.

Prepare ordinances and/or resolutions and any amendments thereto necessary to authorize the Bonds.

Town of Surfside, Florida

July 26, 2024

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Prepare or review the trust indentures, loan agreements, escrow agreements, and any other agreements or similar documents necessary, related or incidental to any financing.

If applicable, review of the bid documents, notice of sale, evaluation of bids and any other documentation or action necessary to conduct a sale of the Bonds in that manner.

Review the transcripts of all proceedings in connection with the foregoing and indicate any necessary corrective action.

Prepare, obtain, deliver and file all closing documents necessary in connection with the Bonds, including, but not limited to, certified copies of all minutes, ordinances, resolutions and orders; certificates as to officers, seal, incumbency, signature, no prior pledge or parity status; and verifications, consents and opinions from accountants, engineers, special consultants and attorneys.

Review any disclosure documents prepared and authorized by the Town, but, in our capacity as Bond Counsel, only insofar as such documents describe any of the Bonds and summarize the underlying documents and federal income tax treatment of interest on the Bonds.

Subject to completion of proceedings to our satisfaction, render on the date the applicable Bonds are exchanged for its purchase price (the "Closing"), our customary approving opinion regarding the validity and binding effect of the Bonds, the source of payment and security for the Bonds, and, as applicable, the exclusion from gross income for federal income tax purposes of interest on the Bonds (the "Bond Counsel Opinion").

Our Bond Counsel Opinion will be addressed to the Town and will be delivered by us at the time of the Closing.

The Bond Counsel Opinion will be based on facts and law existing as of its date. The Firm will not be obligated to update our Bond Counsel Opinion after the date rendered due to any subsequent changes in law or the interpretation thereof or changed circumstances that may affect the opinion as rendered. In rendering our Bond Counsel Opinion, we will rely on the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the Town with applicable laws relating to the Bonds. During the course of this engagement, we rely on you to provide us with complete and timely information on all significant developments pertaining to any aspect of the financing, the Bonds and the security for the Bonds. Among other things, we will require the Town to execute certificates of fact relating to the use of proceeds of the Bonds.

Disclosure Counsel. In this transaction, as Disclosure Counsel, we expect to perform the following duties:

1. Prepare all disclosure documents at the request of the Town, but only insofar as such documents describe the Bonds and summarize the underlying documents. Assist the Town and the Town's financial advisor and underwriters in the preparation of the remaining documents. However, we assume no responsibility for the accuracy or completeness of financial and operating information or any other statistics, projections or data.
2. Perform due diligence with regard to Town financings to assist the Town in providing full disclosure with respect to Town financings.
3. Assist the Town in the compliance with federal and state securities laws.
4. Subject to completion of proceedings to our satisfaction, render appropriate opinions to the Town pertaining to disclosure (the "Disclosure Opinion") as well as a reliance letter to the underwriter.
5. Prepare the Disclosure Dissemination Agent Agreement or Continuing Disclosure Certificate in order to assist the underwriter in complying with the continuing disclosure requirements of Rule 15c2-12.
6. If separately engaged and compensated, when requested we will also prepare or review post-closing secondary market disclosure submissions.

Our Disclosure Opinion will be addressed to the Town and will be delivered by us on the date of the Closing.

The Disclosure Opinion will be based on facts and law existing as of its date. The Firm will not be obligated to update our Disclosure Opinion after the date rendered due to any subsequent change in law or interpretation thereof or change in circumstances that may affect the opinion as rendered. In rendering our Disclosure Opinion, we will rely on the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the Town with applicable laws relating to the Bonds. During the course of this engagement, we rely on Town staff and officials to provide us with complete and timely information on all developments pertaining to any aspect of the financing, the Bonds and the security for the Bonds.

LIMITATIONS ON SCOPE OF ENGAGEMENT

Our duties as Bond Counsel and Disclosure Counsel are limited to those expressly set forth above. Among other things, our scope of services as Bond Counsel and Disclosure Counsel in connection with the issuance of the Bonds does not include, unless separately specifically engaged:

(a) Bond validation proceedings; provided, however, we will provide bond validation legal services as Special Counsel in the manner and to the extent described below.

(b) Preparation of blue sky or investment surveys with respect to the Bonds.

(c) Investigation or expression of any view as to the creditworthiness of the Town, the Bonds, 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).

(d) Representation of the Town in post-closing regulatory investigation or matters.

(e) Bankruptcy matters.

(f) Drafting state constitutional or legislative amendments.

(g) Pursuing test cases or other litigation, such as contested validation proceedings; provided, however, we will provide bond validation legal services which will be conducted as Special Counsel, in the manner and to the extent described below.

(h) After Closing, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking.

(i) If only serving as Bond Counsel, 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.

(j) Preparing requests for tax rulings from the Internal Revenue Service or representing the Town in Internal Revenue Service examinations or inquiries, or Securities and Exchange Commission investigations.

(k) After Closing, providing continuing advice to the Town or any other party concerning changes in law or interpretation thereof or other legal developments or any actions necessary to assure that interest paid on the Bonds will continue to be excludable from gross income for federal income tax purposes (e.g., our engagement does not include arbitrage rebate calculations for the Bonds).

(l) Review of post-closing investment contracts or provide legal services in connection with interest rate swaps or other financial product agreements.

(m) Provide business, financial or accounting advice.

(n) Conducting environmental due diligence or providing services with respect to the acquisition, construction or permitting of the Project.

(o) Addressing any other matter not specifically set forth above that is not required to render our Bond Counsel Opinion.

CONFLICTS

The Firm has disclosed to the Town that it currently and may in the future, serve as bond counsel, disclosure counsel, special counsel, or general counsel to other local governments and as special counsel to underwriters, banks, trustees and other parties that may from time to time transact business with the Town in unrelated public finance matters. Such representations are standard and customary within the industry and the Firm can effectively represent the Town and the discharge of the Firm's professional responsibilities to the Town 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. The Town acknowledges and agrees that the Firm's role as bond counsel, disclosure counsel, or special counsel to any local governmental entity or to any financial institution in conjunction with unrelated public finance transactions is not likely to create or cause any actual conflict, and service as disclosure, bond, or special counsel to other Firm clients will not *per se* be construed as a conflict or be objectionable to the Town. Accordingly, the Town expressly consents to such representation by the Firm consistent with the circumstances described above and waives any conflict of interest with respect thereto. The foregoing consent and waiver shall not apply and the Firm agrees not to undertake any representation in a controversy or litigation between the Town and any other client of the Firm, unless otherwise consented to in writing by the Town.

ATTORNEY-CLIENT RELATIONSHIP

In this transaction, the Town will be our client and an attorney-client relationship will exist between the Town and the Firm. We understand that you are serving as the Town Attorney.

In performing our services as Bond Counsel and Disclosure Counsel, we will represent the interests of the Town exclusively. Our representation of the Town will not affect, however, our responsibility to render objective Bond Counsel Opinions.

Upon closing of the Bond transaction, without notice, it will be presumed that our Firm's services on the subject transaction shall be complete, and our Firm will not be actively providing any services under this engagement letter, until engaged again by the Town or its counsel.

FEES

Our proposed Bond and Disclosure Counsel fees are provided on Exhibit "A" hereto and will be based upon: (i) our then current understanding of the terms, structure, size and schedule of the financing represented by the Bonds; (ii) the duties we will undertake pursuant to our engagement letter with the Town and as described in this engagement letter; (iii) the time we anticipate devoting to the financing in connection therewith; and (iv) the responsibilities we will assume. We reserve the right to revisit our proposed fee with the Town in terms of a proposed increase if (a) material changes in the structure or schedule of the financing occur; or (b) unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility. If, at any time, we believe that circumstances require an adjustment of our original fee proposed, we will advise the Town.

In addition to our proposed fees, we will be reimbursed for all client charges made or incurred in connection with the Bond issue. Such costs generally include travel costs, photocopying, document printing, deliveries, long distance telephone and conference call charges, telecopier charges, filing fees, computer-assisted research, transcript preparation and other expenses. Our fee is usually paid at the Closing, and we customarily do not submit any statement until the Closing unless there is a substantial delay in completing the financing. Detailed supporting documentation is available upon request for statement billings.

If the financing is not consummated, we understand and agree that we will not be paid our proposed fee; however, we expect that all reasonable out-of-pocket expenses are subject to reimbursement.

Town of Surfside, Florida

July 26, 2024

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If the foregoing terms are acceptable to you, please so indicate by returning the enclosed copy of this engagement letter dated and signed by an authorized officer, retaining the original letter for your files.

BRYANT MILLER OLIVE P.A.



Shareholder of Bryant Miller Olive P.A.

Accepted and Approved:

TOWN OF SURFSIDE, FLORIDA

By: _____

Name: _____

Title: _____

Date: _____, 2024

EXHIBIT "A"

BOND COUNSEL FEES

		<u>Loans</u>		<u>Fixed Rate Bonds⁽¹⁾</u>	
First	\$25,000,000	@\$1.50	\$37,500	@\$1.75	\$43,750
Second	\$25,000,000	@\$1.25	\$31,250	@\$1.50	\$37,500
Third	\$25,000,000	@\$1.00	\$25,000	@\$1.25	\$31,250
Fourth	\$25,000,000	@\$0.75	\$18,750	@\$1.00	\$25,000
Fifth	\$25,000,000	@\$0.75	\$18,750	@\$0.75	\$18,750
Sixth and over	\$25,000,000	@\$0.50	\$12,500+	@\$0.50	\$12,500+

*Fees are quoted per bond (per 1,000) and cumulative

There will be a minimum fee of \$25,000 for loans and \$30,000 for Bond transactions (publicly offered) which are below \$25,000,000.

DISCLOSURE COUNSEL FEES

Disclosure Counsel fees will be 75% of the Bond Counsel fee for each transaction. There will be a minimum fee of \$30,000 for transactions which are below \$25,000,000.