

STRATEGIC PRIORITY: Government Performance and Financial Management
AGENDA DATE: April 12, 2023
COUNCIL DISTRICT(S): N/A
DEPARTMENT: Office of Procurement Services
EXECUTIVE: Jack Ireland

SUBJECT

Authorize Supplemental Agreement No. 1 to the City's contract for disclosure counsel legal services with Norton Rose Fulbright US LLP and Kintop Smith, PLLC, to replace Co-Disclosure Counsel, Kintop Smith, PLLC, with Hardwick Law Firm, LLC - Financing: Disclosure Counsel fees to be paid from bond proceeds, General Fund, Aviation Funds, Convention Center Funds, and/or Water Utilities Funds, contingent upon completion of each bond sale, in accordance with the hourly rates and opinion fees as set forth in Attachment A.

BACKGROUND

The scope of services for this contract includes assisting City staff, together with the financial advisor and bond counsel, with meeting its disclosure obligations under federal securities laws in connection with the issuance, sale and delivery of City obligations. As an issuer of municipal bonds, the City is obligated to ensure that any offering documents used in the offering of its bonds meet the requirements of federal securities laws, as well as to annually file certain financial information and provide notice of certain events that may affect the City's ability to repay the bonds. The City must make such disclosure filings with the Municipal Securities Rulemaking Board (MSRB) through its Electronic Municipal Market Access (EMMA). Substantially all of the responsibilities under this contract will be performed by attorneys.

On August 26, 2020, City Council authorized (1) a contingency fee contract for disclosure counsel legal services with Norton Rose Fulbright US LLP and co-disclosure counsel Kintop Smith, PLLC; and (2) a contingency fee contract with McCall, Parkhurst & Horton, L.L.P. and Escamilla & Poneck, LLP and a contingency fee contract with Bracewell LLP and West & Associates, LLP for bond counsel and co-bond counsel services by Resolution No. 20-1251 which will expire on August 31, 2025.

On October 7, 2021, Kintop Smith, PLLC submitted a formal Notice of Termination of the Contract to the City informing the City that, effective November 6, 2022, Kintop Smith, PLLC was discontinuing its status as a legal entity and would be unable to continue to represent the City as Co-Disclosure Counsel. Pursuant to House Bill 2826, effective

September 1, 2019, a special public notice needs to be added to the council agenda that contains City Council consideration of a contingency fee contract for legal services.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On August 26, 2020, City Council authorized (1) a contingency fee contract for disclosure counsel legal services with Norton Rose Fulbright US LLP and Kintop Smith, PLLC; and (2) a contingency fee bond contract with McCall, Parkhurst & Horton, L.L.P. and Escamilla & Poneck, LLP and a contingency fee contract with Bracewell LLP and West & Associates, LLP for bond counsel and co-bond counsel services by Resolution No. 20-1251.

FISCAL INFORMATION

The fees for legal services provided by the disclosure counsel and co-disclosure counsel firms in connection with the issuance, sale and delivery of the City's bonds are contingent upon the sale and delivery of the bonds and are payable from bond proceeds, General Fund, Aviation Funds, Convention Center Funds, and/or Water Utilities Funds, as applicable as follows:

FIRM

FEE

Norton Rose Fulbright US LLP
Disclosure Counsel

Hourly rate fee for services rendered, plus an opinion fee of \$0.21 per \$1,000.00 of increment of bonds issued. See Attachment A to council resolution.

Hardwick Law Firm, LLC
Co-Disclosure Counsel

Hourly rate fee for services rendered, plus an opinion fee of \$0.14 per \$1,000.00 of increment of bonds issued. See Attachment A to council resolution.

OWNER

Norton Rose Fulbright US LLP

Paul A. Braden, Partner, Head of Public Finance, United States

Hardwick Law Firm, LLC

Herbert E. Hardwick, Partner