# City of Benson
# City Council Communication

**Regular Meeting** **September 14, 2015**

To: Mayor and Council Agenda Item # 8

From: William D. Stephens, City Manager

Subject:

Report by staff and/or counsel about the status of the Villages at Vigneto, and possible discussion thereon. This Report will include a discussion about the role of Mark Reader/Stifel, Nicolaus & Co.'s as the underwriter/placement agent for securities issued in relation to a Villages at Vigneto Community Facilities District

Discussion:

At its August 24, 2015 meeting, Mayor and Council stressed the importance of moving this project forward.

The Developer has discussed a request to form one or more Community Facilities Districts (CFD) encompassing the approximately 12,000 acres that form the project. After formation, the CFD would be able to sell bonds to allow it to construct improvements for the site. The City in February 2015 hired Mark Reader of Stifel, Nicolaus & Company, Inc., as the bond underwriter, who would actually find buyers for the bonds once they are authorized for sale. The City has also hired Kutak Rock to form the district. Once it receives a CFD application from the developer, the City is ready to proceed.

The City and the Developer have discussed renegotiating a development agreement for the property. The development agreement would serve as the framework for how the project is built out, including fleshing out project details (size, density, phasing), identifying on-site infrastructure that would have to be constructed, identifying off-site infrastructure required to serve the property, and identifying existing off-site facilities that would need to be expanded or otherwise improved to serve the residents of the development. It would be helpful if, before the CFD is established, the parties have a better understanding of the improvements that will be constructed with the bond funds.

El Dorado submitted the week of 9/7 its proposed final Community Master Plan CMP for the development, and the City and its contract reviewers are reviewing that to ensure its compliance with the applicable requirements.

Staff Recommendation:

Information only

STIFEL

January 14, 2015

Mr. Bill Stevens
City Manager
120 W. 6th Street
Benson, AZ 85602

Re: Underwriter Engagement Relating to Potential Municipal Securities Transactions, Vigneto Community Facilities District, (City of Benson, Arizona - to be formed, name subject to change), General Obligation Bonds, Special Assessment Bonds (amount and timing to be determined)

Dear Mr. Stevens:

The City of Benson, Arizona (the "Issuer or District") and Stifel, Nicolaus & Company, Incorporated ("Stifel") are entering into this memorandum to confirm that discussions related to the potential formation of the Vigneto Community Facilities District by the City of Benson, Arizona and the potential issuance (of series of issuances) of municipal securities, the amount and type of which will be determined in the future (the "Issue or the Bonds") and that the Issuer herby engages Stifel as underwriter / placement agent with respect to the Issue as defined in MSRB Rule G-23. Issuer and Stifel acknowledge that, in all discussions that they will have concerning the potential municipal securities transaction, Stifel will not be serving the role of municipal advisor as defined in the SEC's Municipal Advisor Rule with current effective date of implementation of July 1, 2014. To that end, the Issuer agrees to provide specific project related information to Stifel and Stifel agrees to provide input to the Issuer relating to options concerning structure, timing, terms, and other similar matters related to the expected transaction referenced above.

*Limitation of Engagement*

This Memorandum establishes an engagement which does not obligate either party to execute a municipal securities transaction or to enter into a bond purchase agreement or any other legally binding transaction. The engagement is preliminary in nature, and Issuer acknowledges that it intends or reasonably expects to engage Stifel as the placement agent/underwriter for the identified issuance of municipal securities. This engagement may be subject to conditions such as formal approval of the selection of Stifel as placement agent/underwriter the applicable governing body and the formalization of the structure and terms for the sale or placement of the applicable municipal securities. Additionally, this Memorandum does not restrict the Issuer from entering into engagement letters with more than one placement agent/underwriter, provided that the issuer reasonably expects to engage each such placement agent/underwriter. This engagement is nonbinding and may be terminated immediately at any time for any reason by either party upon written notice.

*Role Disclosure*

The Issuer hereby confirms and acknowledges each of the following concerning the role that Stifel would have as an underwriter/placement agent:

(1) Municipal Securities Rulemaking Board Rule G-17 requires a placement agent/ underwriter to deal fairly at all times with both municipal issuers and investors;

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(2) the placement agent/underwriter's primary role is to purchase securities with a view to distribution in an arm's-length commercial transaction with the issuer and it has financial and other interests that differ from those of the issuer;

(3) unlike a municipal advisor, the placement agent/underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the issuer without regard to its own financial or other interests;

(4) the placement agent/underwriter has a duty to purchase securities from the issuer at a fair and reasonable price, but must balance that duty with its duty to sell municipal securities to investors at prices that are fair and reasonable; and

(5) the placement agent/underwriter will review the official statement (if applicable) for the issuer's securities, and complete requisite due diligence, in accordance with, and as part of, its responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction.

***Disclosures Concerning the Placement Agent/Underwriter Compensation***

The placement agent / underwriter will be compensated by a fee and/or an underwriting discount or placement agent that is outlined below and will be set forth in the bond purchase agreement to be negotiated and entered into in connection with the issuance of the Bonds. Payment or receipt of the underwriting fee or discount will be contingent on the closing of the transaction and the amount of the fee or discount may be based, in whole or in part, on a percentage of the principal amount of the Bonds. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the underwriter may have an incentive to recommend to the Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

Stifel will be compensated by a placement agent or underwriting fee that is covered within the Strategic Alliance for Volume Expenditures Cooperative (SAVE) response to Crane ESD Request for Proposals #C-007-1213 (the "SAVE" Consortium), which provides for underwriting of bonds of similar size, credit quality and amortization.

***Conflicts of Interest Disclosures***

Stifel has not identified any additional potential or actual material conflicts that require disclosure.

***Disclosures Relating to Complex Municipal Securities Financing***

Since Stifel Nicolaus has not recommended a "complex municipal securities financing" to the District, additional disclosures regarding the financing structure for the issuance of the Bonds are not required under MSRB Rule G-17.

However, if Stifel Nicolaus recommends, or if the Issue is ultimately structured in a manner considered a "complex municipal securities financing" to the Issuer, this letter will be supplemented to provide disclosure of the material financial characteristics of that financing structure as well as the material financial risks of the financing that are known to us and are reasonably foreseeable at that time.

Sincerely,

Mark Reader

Mark Reader, Managing Director

cc: Megan Moreno, Finance Director, City of Benson, Arizona
Erika S. Miller - Stifel

The Issuer acknowledges the foregoing.

Accepted and Executed

William D. Stephens

(Name) William D. Stephens

(Title) City Manager Date: 1/30/15

**Accepted and Executed**

**(Name) Toney D. King, Sr.**

**(Title) Mayor Date: 2/9/2015**

APPROVED AS TO FORM* FOR CITY ATTORNEY

*REQUIRES MAYOR AND COUNCIL RATIFICATION

**Consent Agenda – Items Removed:**

1b. Resignation of Ron Brooks from the Benson Economic Development Committee
1c. Appointment of Debra Crafts to the Benson Economic Development Committee

Councilmember Lambert stated another resignation from the Benson Economic Development Committee was submitted to Council on February 3, after the Council agenda was posted and Council packets were distributed. Councilmember Lambert then stated should the Council approve these items, the committee would have its required odd-numbered membership; however, accepting the third resignation would result in the committee consisting of an even-numbered membership, which is not allowed. Councilmember Lambert then stated he would like to table these items until the February 23 Council meeting, making them action items for the Council. Seconded by Councilmember Konrad. Motion passed 6-0.

2. **Discussion and possible action regarding the proposed memorandum engagement letter with Stifel, Nicolaus & Company, Inc.**

City Manager William Stephens stated during a worksession the Council held on January 31, Mr. Mark Reader of Stifel, Nicolaus & Company gave a presentation regarding the possibility of forming a Community Facilities District (CFD) regarding the proposed development of Vingeto, formerly known as Whetstone Ranch. Mr. Stephens then stated for compliance issues, Mr. Reader needed an engagement letter, which was vetted by legal counsel and needed to be ratified by Council, adding his signature met the compliance issue, but the engagement letter needed Council approval.

Councilmember Cook stated the engagement letter indicates that Mr. Reader is not a municipal financial advisor and would have no fiduciary responsibility or duty to the issuer, which is the City and unless the City has an RFP out for an underwriter, Mr. Reader will be the underwriter. Councilmember Cook then asked about the roles of a financial advisor and what Mr. Reader's function would be with Finance Director Megan Moreno stating there are two separate roles that come into play; a municipal financial advisor and an underwriter. Ms. Moreno then stated in this case, Stifel would be acting as the City's underwriter, adding in the past, the roles of a financial advisor and an underwriter could be the same person, but new law in place doesn't allow that anymore. Ms. Moreno then stated as the City's underwriter, Mr. Reader would help structure transactions and when the City is at the point of forming a CFD and having bonds ready to be issued, his responsibility would be to help structure those transactions and sell the bonds. Ms. Moreno then stated the financial advisor, if the City chooses to procure one, is optional and would be another party from a separate firm, adding there have been some discussions about putting out an RFP for a financial advisor, which would be a completely separate discussion and would come back to Council for consideration.

Councilmember Cook stated he had the impression from the worksession and the letter that Mr. Reader would be representing the developer, but he believed that was not the case with Ms. Moreno confirming Mr. Reader would be representing the City and the District, but not the developer. Councilmember Cook asked how Mr. Reader would be paid with Ms. Moreno stating Mr. Reader would receive no compensation until bonds are sold, adding it could be a year or two down the road and noted the fee would be structured into the bond transaction. Councilmember Cook then stated special assessment bonds are paid for by the CFD, but he understood general obligation bonds are paid for by every taxpayer in Benson with Ms. Moreno stating that was not the case, adding all the bonds would be paid for by the District. Councilmember Cook then pointed out the word "underwriter" in the engagement letter from Stifel, Nicolaus & Company was spelled incorrectly and asked if the Council should correct it with City Attorney Paul Loucks stating the Council could.

Councilmember Lambert moved to approve the proposed memorandum engagement letter with Stifel, Nicolaus & Company, Inc. with correction of the typo Councilmember Cook referred to. Seconded by Councilmember Boyle. Motion passed 6-0.