City of Benson
City Council Communication

Regular Meeting **February 9, 2015**

To: Mayor and Council Agenda Item # 2

From: William Stephens, City Manager

Subject:

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

Discussion:

Attached is a memorandum engagement letter with Stifel, Nicolaus & Company, Inc. (Stifel) regarding the placement of Stifel as the agent/underwriter for the identified issuance of municipal securities.

Staff Recommendation:

Approval of the Memorandum Engagement Letter with Stifel, Nicolaus & Company, Inc.

STIFEL

January 14, 2015

Mr. Bill ~~Stevens~~ Stephens
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:~~ Stephens

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 "Issues or the Bonds") and that the Issuer hereby 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/underwrtier. 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;

(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

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(Name) Toney D. King, Sr.

(Title) Mayor Date: 2/9/2015

APPROVED AS TO FORM* FOR CITY ATTORNEY

*REQUIRES MAYOR AND COUNCIL RATIFICATION