City of Benson
City Council Communication

Regular Meeting **July 13, 2015**

To: Mayor and Council Agenda Item # 4

From: William D. Stephens, City Manager

Subject:

Discussion and possible action or direction to Staff about Bond Counsel to assist the City of Benson related to a Community Facilities District for the Villages at Vigneto

Discussion:

To assist in the formation of a Community Facilities District (CFD), one of the roles to be filled is that of Bond Counsel. City Council has received presentations in the past from separate legal firms requesting to fill that role. Those two firms are Kutac Rock and Greenberg Traurig. Each firm has submitted Letters of Engagement for Council's consideration and ultimate selection of one legal firm as Bond Counsel.

Staff Recommendation:

Council pleasure

DRAFT
07/08/15

Michael Cafiso
(602) 445-8452
CafisoM@GTLaw.com

July 13, 2015

VIA E-MAIL

Mayor and Council of the
City of Benson, Arizona
120 West 6th Street
Benson, Arizona 85602
Attention: William Stephens
City Manager

Re: Engagement Letter for Services Relating to Proposed "Villages at Vigneto Community Facilities District"

Dear Mayor and Council:

You have requested Greenberg Traurig, LLP (the "Firm") continue providing legal advice to you as "special counsel" with regard to the formation of a community facilities district (the "District") to finance public infrastructure in connection with development of a master planned community known as "Villages at Vigneto." Such advice would include matters related to, among others, formation of the District and negotiation of provisions of a development agreement as they relate to the District, including, specifically, financial provisions relating to the District. (The Firm understands that you have separately retained Mesch, Clark & Rothschild, P.C. to as act as "general counsel" to you in connection with this matter and assume that all other parties to the transaction will retain separate counsel as they deem necessary and appropriate to represent their interests during the course thereof.)

Typically, in matters like this, the Firm has agreed to provide such services with the understanding that an agreement would be reached pursuant to which the Firm would act as bond counsel to the District, if formed, for purposes of rendering approving opinions with respect to bonds, if any, issued by the District. Fees of the Firm would be determined based on the facts and circumstances at the time such opinions were rendered and be paid from proceeds of the sale of bonds. (No amounts would be due for any services in the ordinary course for providing the advice to the City described above except from such proceeds.) Factors that affect the fees of the Firm under such arrangement include: (a) estimate of the risk involved in

writing usual "unqualified" approving bond opinions (risk is related to the size, complexity and tax questions in the transaction); (b) an estimate of the time necessary to perform legal work; (c) complexity regarding the issuance of the bonds (number of parties, timetable, type of financing and so forth) and (d) recognition of the contingent nature of fee.

Another option would be for the Firm to provide advice of the type needed and that fees of the lawyers of the Firm working on this matter for you, along with "out of pocket" expenses incurred by the Firm in connection therewith, be tracked by the Firm until they accumulate to $20,000, at which point they would be billed by the Firm and paid by you. (Fees of the lawyers of the Firm working on the matter would not exceed a blended rate of $325 per hour.)

Additional services after formation would be the subject of a subsequent fee arrangement upon terms acceptable to you and the Firm. The Firm would plan on responding to any request to act as bond counsel to the District once formed. Notwithstanding the outcome of that though, the Firm would continue to act as special counsel to the City and, after approval of the district board of the District, issuer's counsel to the District for purposes of rendering opinions in those capacities with respect to bonds, if any, issued by the District. (If the Firm was selected as bond counsel, it could render opinions in all three capacities.) Fees of the Firm would be determined based on the facts and circumstance at the time such opinions are rendered and be paid from proceeds of the sale of bonds, if any.

To the extent applicable by provision of law, the Firm acknowledges that this letter is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein.

The above provisions outline in reasonable detail our agreement as to this matter. If you find these arrangements satisfactory, please have the enclosed copy of this letter signed and return it to us in the enclosed envelope. Thereafter, representation will conform to the terms hereof. We sincerely appreciate the opportunity to continue to assist the City and, hopefully, the District, and we look forward to continuing our relationship with regard to this matter.

Very truly yours,

GREENBERG TRAURIG, LLP

By.....
Michael Cafiso

MNC:cg

cc (via email): Paul Loucks, Esq., Mesch, Clark & Rothschild, P.C.

ACCEPTANCE

The undersigned hereby agrees to retain, engage and employ Greenberg, Traurig, LLP, as legal counsel, on the terms and conditions set forth in this letter.

Dated: ....., 2015

CITY OF BENSON, ARIZONA

By.....
Mayor

ATTEST:

.....
City Clerk

APPROVED AS TO FORM:

.....
City Attorney

KUTAK ROCK LLP

SUITE 300
8601 NORTH SCOTTSDALE ROAD

SCOTTSDALE, ARIZONA 85253-2738

480-429-5000
FACSIMILE 480-429-5001

www.kutakrock.com

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WICHITA

May 4, 2015

Bill Stephens
City Manager
120 W. 6th Street
PO Box 2223
Benson, AZ 85602

Re: Engagement as Special Counsel for City of Benson, Arizona

Dear Mr. Stephens:

Thank you for your interest in engaging Kutak Rock LLP as Special Counsel to City of Benson (the "City") with regard to the establishment of community facilities districts and financing infrastructure associated with new development within the City. This letter sets forth our understanding of that engagement.

As Special Counsel, Kutak Rock LLP will assist the City in evaluating the options for financing infrastructure associated with new development proposals in the City, including:

1. Providing assistance and advice on all legal matters relating to the creation and establishment of community facilities districts and any other special districts within the City;

2. Preparing any necessary documents and policies relating to the establishment of community facilities districts;

3. Structuring advice regarding the establishment of any community facilities district to ensure that the sources for the repayment of any obligations issued by such districts have been properly secured and that the interest on any obligations is eligible to be exempt from federal and Arizona taxation.

4. Consulting with members of the City Council, the City Attorney, consultants and advisors regarding the structure of the bond issuance, timing of sale and other matters relating to the issuance of obligations;

5. If so directed by the City, serving as bond counsel to the any community facilities district created within the Town; and

6. Participating in meetings, including Board meetings as necessary.

We will bill the City at a blended hourly rate of $325 which may be paid monthly or at the time debt obligations are issued by any community facilities district created in the City; provided, however, that if no debt obligations are issued by December 31, 2015 (and at the end of each calendar year thereafter), the City shall pay such amounts then due and owing. The firm's public finance partners who will be principally involved in this representation will be Anthony Giancana and Ken Guckenberger. Attorneys from other practice areas, such as real estate and corporate, will be added to the team if needed as our work progresses. Associates and paralegals will be utilized in order to keep our blended hourly rate at $325.

Kutak Rock LLP will perform its obligations in accordance with the standards of professional responsibility applicable to attorneys. This engagement letter shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

The City may terminate this agreement with respect to our engagement by notifying Kutak Rock LLP in writing. Conversely, Kutak Rock LLP may withdraw as counsel to one or more of the City and terminate this agreement in a manner that protects the interests of the City in the work being performed by Kutak Rock LLP by notifying the City in writing.

If the above sets forth our understanding to your satisfaction, please confirm the terms of our engagement by signing, dating and returning the enclosed copy of this letter. This letter may be executed in two or more counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which shall constitute one and the same instrument.

Sincerely,

Kutak Rock LLP

KUTAK ROCK LLP

CONFIRMED AND AGREED TO AS OF THE DATE INDICATED BELOW:

TOWN OF BENSON

By:_____
Authorized Officer

Date:_____