

Agenda Item No: Consent Agenda - i.

Meeting Date: August 23, 2021

Subject: Consent Agenda Item

City Staff Member: A.J. Euckert, City Manager

i. Resolution 21-62, approving an Engagement Letter with Kutak Rock for bond counsel services and acquisition matters

This engagement letter is for bond counsel services and acquisition matters related to the previously approved of Certificates of Participation (COP) Ordinance for property acquisition and improvements.

The fees being charged for bond counsel services will be paid from proceeds at closing. If closing does not occur, for some reason, no fees will be paid to Kutak Rock. The fees being charged for acquisition services will be due on a monthly basis, but may be eligible to be included in the financing.

Kutak Rock was the underwriter for construction of the new City annex building and remodeling of City Hall and Police Department project.

RESOLUTION NO. 21-62

A RESOLUTION APPROVING AN ENGAGEMENT LETTER WITH KUTAK ROCK

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. The Letter by and between the City of Dacono and Kutak Rock for bond counsel services and acquisition matters is hereby approved in essentially the same form as the copy of such Letter accompanying this Resolution.

Section 2. The Mayor is hereby authorized to sign the Letter and is further authorized to negotiate and approve on behalf of the City such revisions to the Letter as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Letter are not altered.

INTRODUCED, READ, and ADOPTED this 23rd day of August, 2021.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk

August 18, 2021

Mr. A.J. Euckert, City Manager
City of Dacono, Colorado
5112 Cherry Street
Dacono, Colorado 80514

Re: Proposed purchase by the City of Dacono, Colorado (the “City”) of multiple parcels of real property and the issuance of Certificates of Participation, Series 2021, representing an assignment of the right to receive certain revenues pursuant to a Lease Purchase Agreement (the “Lease”) by and between the City and UMB Bank, n.a., for the funding of such acquisition and related improvements to be used for administrative or other governmental purposes

Dear A.J.:

We are pleased to submit this letter for our engagement both as (1) special counsel to the City of Dacono, Colorado (the “City”) in connection with the City’s purchase of several parcels of land and any improvements thereon (the “Acquisition Matter”) and as (2) bond counsel to the City in connection with the issuance of the above referenced Certificates of Participation (the “COPs”) to be issued by or on behalf of the City (the “Financing Matter” and together with the Acquisition Matter, the “Matters”). Piper Sandler & Co. has been engaged by the City to serve as the underwriter in connection with the offer and sale of the COPs. The par amount of the COPs is currently expected to be approximately \$4,500,000 and the COPs are expected to be issued in calendar year 2021. A portion of the net proceeds of the COPs is expected to be used to pay or reimburse the City for its payment of the purchase prices of the various parcels to be acquired.

Scope of Acquisition Matter Engagement

Kutak Rock LLP would render legal advice and services to the City in connection with the Acquisition Matter. In addition, while we would provide you with our recommendation as to courses of action available to you, the final decision on any issue would be entirely yours. We anticipate that our services in connection with the Acquisition Matter include, as directed by you, document drafting and review and negotiation of any agreements, certificates or other third-party prepared documents, as well as real estate due diligence, and advice on related environmental and regulatory matters, and such other matters as may arise from time to time.

Scope of Financing Matter Engagement

Bond Counsel Services

Kutak Rock LLP would provide the usual and customary services rendered by bond counsel in certificate of participation financings, including the following.

(1) Provide the City with legal advice and assistance on (a) financing structure and options, including payment terms and credit enhancement; (b) federal and state tax matters as they relate to the financing; and (c) federal and state securities issues as they relate to the financing.

(2) Confer with City officials, the Underwriter and other consultants identified by the City relating to the financing.

(3) Participate in and direct the development and preparation of the principal legal documentation necessary to complete the financing in accordance with the City's timetable including, without limitation, the lease purchase agreement, the mortgage and indenture of trust, certificate purchase agreement, continuing disclosure undertaking and the ordinance of the City authorizing the financing.

(4) Assist, as requested, in presenting information to rating agencies or the Insurer.

(5) Issue a bond opinion and, if necessary or appropriate, opinions on related matters such as the applicability of federal and state securities and taxation laws and regulations, the defeasance of the refunded certificates, and the validity and enforceability of any other documents related to the COPs and their security.

(6) Arrange for and direct the closing of the financing.

(7) Prepare closing transcripts for all parties to the financing.

(8) Perform all other functions customarily within the scope of the duties of bond counsel.

Official Statement.

In this engagement, we expect to render legal advice to the City in the preparation of an official statement to be used in the offer and sale of the COPs (the "Official Statement"). In connection with this service, Kutak Rock LLP will represent to the City and the underwriter that, while we are not passing upon, and do not assume responsibility for, the accuracy, completeness or fairness of the statements contained in the final Official Statement and have made no independent investigation or verification with respect thereto, based solely upon our activities referred to above, nothing has come to the attention of the attorneys in our firm who have worked

on this engagement which leads us to believe that the final Official Statement (other than the financial, statistical or engineering data contained therein, any expressions of opinion or projections contained therein, information regarding treatment of interest on the Certificates for purposes of federal and state taxation, and audited financial statements of the City included in the Official Statement, as to which we express no view or belief) as of its date contained, or as of the date hereof contains, any untrue statement of a material fact or as of its date omitted, or as of the date hereof omits, to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Limitation of Duties.

Our duties in this engagement are limited to those expressly set forth above. Among other things, our duties do not include preparing blue sky or investment surveys with respect to the COPs or making an investigation or expressing any view as to the creditworthiness of the City or the COPs.

Responsible Attorneys.

The firm's real estate partner who will be principally involved in the Acquisition Matter is Meredith Riley. The firm's public finance partner who will be principally involved in the Financing Matter is Mario Trimble.

Attorney-Client Relationship

With respect to these respective matters, the City will be our client and an attorney-client relationship will exist between us. We assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. We further assume that all other parties understand that in this transaction we represent only the City, we are not counsel to any other party, and we are not acting as an intermediary among the parties. Our services hereunder are limited to those contracted for in this letter; the City's execution of this engagement letter will constitute an acknowledgment of those limitations. Our representation of the City and the attorney-client relationship created by this engagement letter will be concluded with respect to the Acquisition Matter upon acquisition of the third parcel of property and with respect to the Financing Matter upon issuance of the COPs.

Conflicts

As you are aware, our firm represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the City, one or more of our present or future clients will have transactions with the City. It is also possible that we may be asked to represent, in an unrelated matter, one or more of the entities involved in the Matters. We do not believe such representation, if it occurs, will adversely affect our ability to represent you as provided in this letter, either because such matters will be sufficiently different from the

Matters so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the Matters. Execution of this letter will signify the City's consent to our representation of others consistent with the circumstances described in this paragraph.

Fees in Connection with Acquisition Matter

With respect to the Acquisition Matter, the City agrees to pay us for the legal services performed by us in connection with this engagement based on our standard hourly billing rates. We normally record time in one-tenth of an hour (six-minute) intervals for actual time spent on a matter. Accordingly, the City agrees to pay for our services at our hourly rates in effect when the services are rendered. Meredith Riley's current hourly rate is \$ 410. The current hourly rates for the primary paralegals and attorneys contemplated to work on the Matter range from \$200 to \$500 per hour. These rates are adjusted from time to time, typically at the beginning of each year. In addition, when it is practical and efficient, the Firm has a practice of using paralegals, clerks and other legal assistants for the benefit of our clients. These services will also be billed at the current rates for such personnel.

We will provide the City with detailed statements of our fees and disbursements on a monthly basis, approximately 20-30 days after the end of the month. Each statement will include a description of the services performed and a description of any disbursements incurred by us on your behalf for which we expect reimbursement. The statements will be due and payable by the City within 30 days after receipt. Unless we specifically agree otherwise in writing, our fees are not contingent on whether or not a transaction closes or the achievement of any other result by the City. Fees may be paid by check or wire transfer pursuant to the instructions set forth on our invoices.

If our invoices are not paid, we reserve the right to suspend work on this matter and to require payment of overdue amounts and of an initial or additional retainer before we render any further services. We may also apply late charges in the event invoices are substantially overdue or pursue other remedies, including the application of moneys held for the City in our trust account to unpaid balances and withdrawal from our representation.

Please feel free to contact Meredith Riley directly if you have questions about any of our statements or would like to know the amount of fees and disbursements that have been recorded on our accounting system but not yet billed.

Fees in Connection with Financing Matter

With respect to the Financing Matter, based upon: (a) our current understanding of the terms, structure, size and schedule of the financing represented by the COPs; (b) the duties we will undertake pursuant to this engagement letter; (c) the time we anticipate devoting to the financing;

and (d) the responsibilities we will assume in connection therewith, our fee for legal services with respect to the Financing Matter will be \$60,000. We understand and agree that such fees will be paid on or about the date of delivery of the COPs. If the financing is not consummated, we understand and agree that we will not be paid for services rendered to the City pursuant to this engagement with respect to the Financing Matter.

Subpoena, Depositions and Related Matters

If we are required to respond to a subpoena of our records relating to services we have performed for the City in connection with the Matters, or to testify by deposition or otherwise concerning such services, we will first consult with you as to whether you wish to supply the information demanded or assert your attorney-client privilege to the extent you may properly do so. You agree to reimburse us for our time and expenses incurred in analyzing and responding to any such demand, including review of records, appearing at depositions or hearings and otherwise litigating issues raised by the request.

Records

At your request, papers and property furnished by you will be returned. Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us after the termination of this engagement.

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 for your files. We appreciate the opportunity to provide legal services to the City and look forward to working with you.

Sincerely,

Mario T. Trimble

MRR; MTT