

RESOLUTION NO. 3769

A RESOLUTION APPROVING A PROPOSAL FROM DORSEY & WHITNEY LLP FOR PROVISION OF PROFESSIONAL SERVICES RELATED TO OBTAINING A SEWER SYSTEM REVENUE BOND FOR WASTEWATER TREATMENT PLANT UPGRADES

WHEREAS, the City of Miles City is in the process of making required upgrades to the City's wastewater treatment facility;

AND WHEREAS, the City wishes to engage the services of Dorsey & Whitney LLP of Missoula, Montana to provide certain services related to obtaining a bond to fund such improvements;

NOW THEREFORE BE IT RESOLVED by the City Council of Miles City, Montana, as follows:

1. That the Sewer System Revenue Bond Proposal Letter, attached hereto as Exhibit "A," is hereby approved and adopted by the City Council of the City of Miles City;
2. That the Mayor of the City of Miles City is hereby authorized and empowered to execute the Acknowledgment contained in said letter on behalf of the City, and to bind the City thereto;
3. That the Mayor is hereby authorized to execute such additional documents as may be necessary to carry out the terms of said Letter.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 13th DAY OF JANUARY, 2015.



C.A. Grenz, Mayor

ATTEST:

Lorrie Pearce, City Clerk



DAN SEMMENS
semmens.dan@dorsey.com

December 29, 2014

Ms. Lorrie Pearce
City Clerk
City of Miles City
P.O. Box 910
Miles City, MT 59301

RE: Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014
City of Miles City, Montana

Dear Lorrie:

The City of Miles City, Montana (the "City") intends to borrow funds for needed improvements (the "Project") to its sewer system (the "System"). It is anticipated that the City would obtain financing for the Project from the State's Water Pollution Control State Revolving Fund Program (the "Program"). We have enjoyed working with the City and will be pleased to serve as Bond Counsel in connection with the issuance by the City of its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014 (the "Bond"). The Bond will evidence loans from the Program to finance the Project. The purpose of this letter is to outline the services we would provide and give a cost estimate of our services.

As bond counsel our principal function is to render opinions with respect to the authorization and issuance of the Bond. The opinions are rendered in written form at the time the Bond is delivered to the Montana Department of Natural Resources and Conservation (the "DNRC"), and are addressed to the City and the DNRC. In fulfilling that function and responsibility, we have performed or will perform the following tasks:

- 1) prepare the bond resolution and the Bond and review proceedings of the City relating to other outstanding bonds and notes charged for the use and availability of the System, if any;
- 2) coordinate with the City Clerk-Treasurer, or other designated officer, the adoption of the resolution and other actions necessary to be taken by the governing body of the City;
- 3) review sewer rate ordinances and resolutions to confirm that rates and charges are in effect at the time the Bond is issued to provide adequate revenues to pay the costs of operating and maintaining the System, to pay debt service on any outstanding bonds, and to produce sufficient net revenues to pay the Bond and any bonds issued on a parity therewith;

Ms. Lorrie Pearce, City Clerk
December 29, 2014
Page 2

- 4) prepare a reimbursement resolution for the City;
- 5) advise the City of the statutory requirements for the issuance of the Bond and the Program rules for the purchase of the Bond by the Program;
- 6) prepare closing documents for the City and supervise closing on the Bond; and
- 7) deliver the opinions discussed above to the City and the DNRC.

The fee for our services is a function of the size of the bond issue and the amount of time expended. Based on an estimated total principal amount of the Bond of \$6,205,000, we estimate our fee to be from \$35,000 to \$45,000. We would expect to be paid at the time of closing on the Bond. Our fees are eligible costs of the Project and can be included in the amount of the City's initial disbursement of the loans, if the City intends to use that source. It is mutually understood that the services set forth in this letter are solely for the benefit of the City.

You should be aware that we have served as bond counsel to the State of Montana (the "State") with respect to establishing the Program and the issuance of the State's general obligation bonds to fund the Program. As bond counsel for the City's Bond, we would not represent the State or the DNRC in the negotiation of the terms of the Bond, the Bond Resolution, or other aspects of the proposed financing. At this point, the terms of the financing have been established in the approved Program documents and regulations and our principal task is to finalize a Bond Resolution that conforms to these requirements and the terms of the Commitment Agreement or commitment letter that will be prepared by the DNRC (the "Commitment Agreement"). (In advising the City of the statutory and other legal requirements for the issuance of the Bond, in accordance with provisions of the Commitment Agreement and statutory provisions and Program requirements, we can advise the City with respect to the legal implications of the covenants in the Commitment Agreement or statutes or Program requirements that would be contained in the Bond Resolution.) Accordingly, we do not anticipate that our acting as bond counsel to the State with respect to the Program will represent any practical impediment to our acting as bond counsel to the City with respect to the Bond; and, in fact, we believe our familiarity with the Program could be an advantage to the City in completing its proceedings efficiently.

As bond counsel to the State and the Program, however, we are available to the State, and we would intend to respond to questions raised by the DNRC regarding requirements of the Program, the operative documents relating to the State's bonds and the legal issues relating to the type of obligation being purchased by the Program to evidence the Program loan, in this case a revenue bond. In such a response, we would not attempt to advocate a position on behalf of either the State or the City, but to respond in our capacity as bond counsel with respect to the State's outstanding bonds. While we would attempt to render independent advice, the potential for a conflict of interest or the appearance of a conflict of interest is present. The State has consented to our acting as bond counsel for the City's Bond.

Ms. Lorrie Pearce, City Clerk
December 29, 2014
Page 3

We hope that this proposal to serve as bond counsel on this financing meets with the approval of the City, and we trust that our serving as bond counsel to the City and as bond counsel to the State with respect to the Program is acceptable to the City. If so, will you please so acknowledge by signing the attached acknowledgement and returning a copy to us. If there are any questions, please give us a call so that we might answer those questions or provide any additional information about our firm or our qualifications to serve the City in this capacity.

Very truly yours,



Dan Semmens

DPS/mm

Ms. Lorrie Pearce, City Clerk
December 29, 2014
Page 4

ACKNOWLEDGMENT

The undersigned acknowledges receipt of the attached and foregoing engagement letter dated December 29, 2014, and confirms, on behalf of the City, its consent to the representation described therein.

Accepted this 13th day of January, ~~2014~~ ²⁰¹⁵.

CITY OF MILES CITY, MONTANA

By: X *C. A. Gung*

Its Mayor