

RESOLUTION NO. <sup>2010-</sup>1979

**A RESOLUTION OF THE TOWN COMMISSION  
OF THE TOWN OF SURFSIDE, FLORIDA, RE-  
APPOINTING THE LAW FIRM OF BRYANT  
MILLER OLIVE AS SPECIAL BOND COUNSEL;  
SETTING FORTH THE TERMS AND  
CONDITIONS OF THAT APPOINTMENT;  
PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Town of Surfside first retained Bryant Miller Olive (“BMO”) as bond counsel on June 10, 2008, and pursuant to that appointment, BMO performed all the legal work, issued legal opinions, and created a bond ordinance in connection with the proposed issuance of a General Obligation Bond, Series 2008 for the financing of the Town’s Community Center. The proposed bond issue was subsequently rejected by the voters and Bryant Miller Olive was not paid for any legal work performed; and

**WHEREAS**, BMO’s has already demonstrated its expertise and abilities. They have acquired knowledge of the Town and its issues and therefore, the Town Manager believes, pursuant to Section 3-13(3) of the Town Code, it is in the Town's best interest to waive the competitive bidding procedures and re-appoint BMO as Special Bond Counsel; and

**WHEREAS**, in connection with the proposed issuance of Town of Surfside Capital Improvement Revenue Bonds for water, sewer, and storm drainage repair and upgrade, BMO’s retainer agreement attached as Exhibit “A” advises the terms and conditions they will perform as Special Bond Counsel; and

**WHEREAS**, the Town Commission (“Commission”) of the Town of Surfside (“Town”) has determined that it is in the best interest of the Town to re-appoint the Law Firm of Bryant Miller Olive as Special Bond Counsel; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION  
OF THE TOWN OF SURFSIDE, FLORIDA, THAT:**

**Section 1. Recitals.** The above recitals are true and correct and incorporated into this Resolution by this reference.

**Section 2. Re- Appointment of Special Bond Counsel.** The law firm of Bryant Miller Olive is hereby re-appointed Special Bond Counsel on the terms and conditions contained in the retainer agreement attached hereto as Exhibit "A" with the fee to be negotiated by the Town Attorney in accordance with community custom and practice.

**Section 3. Term.** Special Bond Counsel shall serve at the pleasure of the majority of the Town Commission.

**Section 4. Effective Date.** This Resolution shall take effect immediately upon adoption.

Motion by Commissioner Graubart Second by Commissioner Karukin.

**PASSED AND ADOPTED** this 9 day of November, 2010

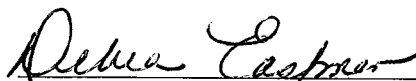
**FINAL VOTE ON ADOPTION**

Commissioner Michael Karukin  
Commissioner Edward Kopelman  
Commissioner Marta Olchyk  
Vice Mayor Joseph Graubart  
Mayor Daniel Dietch

yes  
absent  
yes  
no  
yes

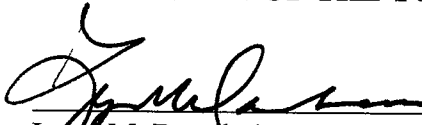
  
Daniel Dietch, Mayor

**ATTEST:**

  
Debra E. Eastman, MMC, Town Clerk

Resolution No. 10-1973

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



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Lynn M. Dannheisser  
Town Attorney

Resolution No. 1973

November 2, 2010

Lynn M. Dannheisser  
Town Attorney  
9293 Harding Avenue  
Surfside, Florida 33154

Proposed issuance of Not to Exceed \$\_\_\_\_\_ Town of Surfside, Capital  
Improvement Revenue Bonds, Series 2011

Dear Ms. Dannheisser:

The purpose of this letter is to advise you of our fee estimate and to describe the services we will perform as bond counsel to the Town of Surfside, Florida (the "Issuer") in connection with the issuance by the Issuer of approximately not to exceed \$\_\_\_\_\_ principal amount of its Capital Improvement Revenue Bond, Series 2011(the "Bonds"), the proceeds of which will be used to finance capital improvement projects in the Issuer (the "Project") and pay the costs of issuance of such Bonds.

#### **SCOPE OF ENGAGEMENT**

In this transaction, we expect to perform the following duties as Bond Counsel:

##### ***I. Bond Counsel Services***

(1) Subject to the completion of proceedings to our satisfaction, render our legal opinion (the "Bond Opinion") regarding the validity and binding effect of the Bonds, the source of payment and security for the Bonds, and the excludability of interest on the Bonds from gross income for federal income tax purposes.

(2) Draft the basic agreements governing the issuance of the Bonds.

(3) Prepare and review other documents necessary or appropriate to the authorization, issuance and delivery of the Bonds, coordinate the authorization and execution of documents, and review and, where appropriate, draft enabling legislation.

(4) Prepare the Issuer's declaration of official intent, if any, to reimburse Project costs paid by the Issuer prior to the issuance of the Bonds.

(5) Assist the Issuer in seeking from other governmental authorities such approvals, permissions and exemptions as we determine are necessary or appropriate in connection with the authorization, issuance, sale and delivery of the Bonds, except that we will not be responsible for any required blue sky filings. We understand, however, that Issuer's counsel will be responsible for obtaining all approvals and permits relating to the construction and operation of the Project.

(6) Review legal issues relating to the structure of the Bond issue.

(7) Review all documents prepared by the bank.

(8) Review and provide counsel on documents relating to receipt of a rating of the Issuer and on the Bonds, if a public offering.

(9) Serve as the Issuer's closing agent in connection with the closing of the Bonds.

Our Bond Opinion will be addressed to the Issuer and will be delivered by us on the date the Bonds are exchanged for its purchase price (the "Closing").

The Bond Opinion will be based on facts and law existing as of its date. In rendering our Bond Opinion, we will rely on the certified proceedings and other certifications of public officials, officers of the Issuer and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the Issuer with applicable laws relating to the Bonds. During the course of this engagement, we rely on you to provide us with complete and timely information on all developments pertaining to any aspect of the Project, the Bonds and the security for the Bonds. Among other things, we will require the Issuer to execute a certificate of fact relating to the Project and the use of Bond proceeds.

Among other things, our duties as Bond Counsel do not include:

(a) Preparation of blue sky or investment surveys with respect to the Bond.

(b) Investigation or expression of any view as to the creditworthiness of the Issuer, the Bond, any credit enhancement provider, or the debt instrument; or, providing services related to hedging or derivative financial products (e.g. "swaps" and related documents or opinions).

(c) Representation of the Issuer in post-closing regulatory investigation or matters.

(d) Bankruptcy matters.

- (e) Drafting state constitutional or legislative amendments.
- (f) Pursuing test cases or other litigation, such as contested validation proceedings, except as set forth above.
- (g) Representing the Issuer in Internal Revenue Service examinations or inquiries, or Securities and Exchange Commission investigations.
- (h) After Closing, providing continuing advice to the Issuer or any other party concerning any actions necessary to assure that interest paid on the Bond will continue to be excludable from gross income for federal income tax purposes unless specifically engaged for such purpose (e.g., our engagement does not include rebate calculations for any Bond, but such services can be separately contracted for with Integrity Public Finance consulting LLC, a subsidiary of the Firm).
- (i) Addressing any other matter not specifically set forth above that is not required to render our Bond Opinion.

#### **ATTORNEY-CLIENT RELATIONSHIP**

We understand that you have retained the Town Attorney to act as Issuer's counsel in this transaction. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction.

#### **FEES**

The Issuer will be responsible for payment of our fee, which will be \$\_\_\_\_\_ for Bond Counsel. Our fee is based upon: (i) our current understanding of the terms, structure, size and schedule of the financing represented by the Bonds; (ii) the duties we will undertake pursuant to our engagement letter with the Issuer and as described in this letter; (iii) the time we anticipate devoting to the financing in connection therewith; (iv) the Bonds being sold as a private placement to a bank; and (v) the responsibilities we will assume. Our fee may vary: (a) if the principal amount of Bonds actually issued differs significantly from the amount stated above; (b) if material changes in the structure or schedule of the financing occur; (c) the Bonds are sold as a public offering; or (d) if unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility. If, at any time, we believe that circumstances require an adjustment of our original fee estimate, we will advise you.

In addition, we will be reimbursed for all client charges made or incurred in connection with the Bond issue. Such costs generally include travel costs, photocopying, document printing, deliveries, long distance telephone charges, telecopier charges, filing fees, computer-assisted research and other expenses. Our fee is usually paid at the Closing, and we

customarily do not submit any statement until the Closing unless there is a substantial delay in completing the financing. Detailed supporting documentation is available upon request for statement billings.

If the financing is not consummated, we understand and agree that we will not be paid the stated fee, however, we will be paid all out-of-pocket expenses incurred.

### CONFLICTS

The rules regulating The Florida Bar provide that common representation of multiple parties is permissible where the clients are generally aligned in interest, even though there is some difference in interest among them. The Firm has disclosed to the Issuer that it has, and may in the future, serve as bond or disclosure counsel to other local governments or otherwise act as original purchaser's counsel on public finance matters in Florida. The Firm has an active and wide-ranging practice in public finance in Florida and elsewhere in the United States. In the course of that practice and other engagements the Firm undertakes, the Firm represents numerous public entities, financial institutions, credit banks, credit enhancers, underwriters and issuers of bonds, lenders, borrowers, counterparties and trustees. Therefore, in the course of the Firm's representation of the Issuer as Bond Counsel in public finance transactions, the Firm may now or in the future represent entities that, by virtue of their involvement in a particular transaction, industry, business, trade, or otherwise, have interests adverse to those of the Issuer in matters unrelated to the particular public finance transactions in which the Firm represents the Issuer. Material risks may arise when an attorney represents clients with adverse interests. For example, confidential information disclosed by a client during the course of an engagement might, if inadvertently disclosed to another client, be detrimental to the client. Usually this is not a relevant factor when dealing with public entities subject to the Florida public records laws. Such representations may create the perception that the lawyer might represent one client less zealously in order to advance the interests of another client.

The Firm believes that the Issuer is a sophisticated client that readily appreciates the implications of conflicts and waivers and has ready access to independent counsel. After careful consideration, the Firm reasonably believes that it can and will competently and zealously represent the Issuer in public finance transactions notwithstanding its current or future representation of clients with interests adverse to the Issuer in unrelated matters. The Firm will maintain confidentiality and not disclose or use any of the Issuer's nonpublic, confidential information acquired as a result of its representation of the Issuer to the Issuer's disadvantage in connection with any matter in which the Firm represents an entity adverse to the Issuer. The Firm encourages the Issuer to consult independent counsel regarding the issues addressed herein. In that regard, it is the Firm's belief that a disinterested lawyer would conclude that the advantages to the Issuer of engaging the Firm outweigh any existing or potential material risks arising from the Firm's representation of other entities, would conclude that it is proper to seek consent, and would counsel the Issuer to consent to this representation.

In each transaction, the Issuer will be our client and an attorney-client relationship will exist between the Issuer and us. In performing our services as Bond Counsel, we will represent the interest of the Issuer exclusively. We will not be representing any other party and will not be acting as an intermediary among the parties. Our representation of the Issuer will not affect, however, our responsibility to render an objective Bond Opinion.

BRYANT MILLER OLIVE P.A.

By: *Patricia Manning*  
Shareholder

Accepted and Approved:

THE TOWN OF SURFSIDE, FLORIDA

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_