



City of Broken Arrow

Request for Action

File #: 17-2843, Version: 1

**Broken Arrow City Council
Meeting of: 11-07-2017**

**To: Mayor and City Council
From: Office of the City Attorney**

Title: Consideration, discussion, and possible approval of and authorization to execute an Engagement Letter with the law firm of Hawkins, Delafield, and Wood, LLP, to function as special counsel in connection with certain federal securities law matters relating to the City's disclosure practices in connection with the City's issuance and administration of general obligation bonds issued by the City

Background:

Rule 15c2-12 of the Securities and Exchange Commission (SEC) requires dealers, when underwriting certain types of municipal securities, to ensure that governmental entities issuing the bonds enter into an agreement to provide certain information to the Municipal Securities Rulemaking Board (MSRB). Submission of this information is required on an annual basis. The continuing disclosure agreements for issues after 2010 require submission of annual financial information as well as certain event notices. The annual financial information generally consists of financial information and operating data and audited financial statements. Event notices typically include information on any principal and interest payment delinquencies, non-payment related defaults, unscheduled draws on debt service reserves and credit enhancements, substitution of credit or liquidity providers, adverse tax opinions or other events affecting the tax-exempt status of the security, modification of rights of security holders, bond calls and tender offers, defeasances, release, substitution or sale of property securing repayment of the securities, rating changes, bankruptcy, insolvency or receivership, merger, acquisition or sale of all issuer assets, and appointment of a successor trustee. Annual disclosures are required to be submitted through the Electronic Municipal Market Access website (known as "EMMA"). EMMA displays continuing disclosure information as part of the MSRB's objective to provide municipal market information.

Over the last few years, the SEC has increased its enforcement efforts with regard to the issuance of certain types of municipal securities. Financial advisors, public bodies, and even Finance Directors have been the subject of SEC investigations and subsequent Administrative Orders. To address these concerns, municipalities have begun retaining Disclosure Counsel to assist Staff and elected officials with ensuring compliance with continuing disclosure requirements, the related agreements and the Official Statement. Last year, the City retained local bond attorney John Weidman to serve as Bond Counsel. Staff conducted an exhaustive review of the Official Statement utilized in the 2016 General Obligation Bond issuance. Additionally, Staff meticulously completed a Due Diligence Questionnaire with the assistance of Mr. Weidman to identify any and all issues that might have been required for disclosure.

Through the efforts of the City's long-time Bond Counsel, Don Kiser, the well-respected firm of Hawkins, Delafield and Wood, LLP, has agreed to undertake the City as a client. Specifically, the firm will serve as special counsel in connection with certain federal securities law matters relating to the City's disclosure

practices in connection with its issuance and administration of general obligation bonds issued by the City. The attached Engagement Letter outlines the initial scope of this engagement and the basis on which the firm will provide legal services to the City. Fees associated with the retention of Disclosure Counsel will be included as part of the General Obligation Bond issuance costs.

Attached to this item, Council will find background information on three (3) of the attorneys from Hawkins, Delafield and Wood. The main partner, John McNally, is an expert in the area of both securities and public finance. He served as project coordinator for the *Third Edition* of the Disclosure Roles of Counsel in State and Local Government Securities Offerings, a joint publication of the American Bar Association and the National Association of Bond Lawyers. Ken Roberts, a partner in the firm, will be the City's primary contact. Hawkins, Delafield and Wood is considered to be one of the Nation's most-respected firms in public finance. As a result, Staff recommends that the Council approve the Engagement Letter and authorize its execution.

Cost: **\$250.00-\$900.00 per hour - Cost to be paid out of General Obligation Bond Issuance Costs**

Prepared By: **Beth Anne Childs, City Attorney**

Reviewed By: **Finance Department
Russell Gale, Assistant City Manager-Administration**

Approved By: **Michael L. Spurgeon, City Manager**

Attachments: **Engagement Letter with Hawkins, Delafield and Wood, LLP
Biographies for John M. McNally, Kenneth B. Roberts and Daniel G. Birmingham**

Recommendation: Approve Engagement Letter with Hawkins, Delafield and Wood, LLP, and authorize its execution.