

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	July 11, 2017	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Department of Economic Sustainability		
Submitted For:	Housing Finance Authority of Palm Beach County		

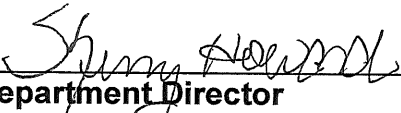
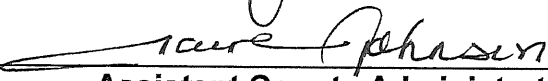
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to Contracts for Bond and Disclosure Counsel Services between the Housing Finance Authority of Palm Beach County, Florida (HFA) and **A)** Greenberg Traurig, P.A.; and **B)** Bryant Miller Olive P.A., to extend the term by one (1) year and to adjust the fees for legal services.

Summary: On May 12, 2012 (Agenda Item 3D-3), the Board of County Commissioners (BCC) approved a Contract for Bond and Disclosure Counsel Services (Contract) between the HFA and each of the two (2) above named law firms. Each contract was for an initial term of three (3) years and allowed for automatic one (1) year renewals thereafter unless one of the parties wished to terminate. The legal services provided by these firms include advice on all actions necessary for the HFA's issuance of bonds, the preparation of bond documents and bond counsel opinions, the review and comment on all documents prepared by others in connection with bond issuances, and the preparation of the bond offering documents and opinions thereon as disclosure counsel. On May 12, 2017, the HFA Board approved Resolution No. 2017-04 authorizing First Amendments to the Contracts with the two (2) law firms subject to BCC approval. BCC approval is now required since the parties wish to change the compensation amounts in both Contracts and such change does not fall under the allowed automatic renewal where fees remain the same. Approval by the BCC of both First Amendments is requested pursuant to Section 2-189 of the Housing Finance Authority of Palm Beach County Ordinance which requires that all contracts for the purchase of goods and services in excess of \$10,000 be approved by the BCC. Countywide (PFK)

Background and Justification: Pursuant to a Request for Qualifications process conducted in 2012, the HFA entered into a separate Contract for Bond and Disclosure Counsel Services with each of the above named law firms upon approval by the BCC which was provided on May 12, 2012. The firms recently presented a request for an increase in fees as set forth in Section 2 of the attached HFA Resolution No. 2017-04.

- Attachment(s):**
- 1. HFA Resolution No. 2017-04 with Exhibit A
 - 2. First Amendment to Contract for Bond and Disclosure Counsel Services with Greenberg Traurig, P.A.
 - 3. First Amendment to Contract for Bond and Disclosure Counsel Services with Bryant Miller Olive P.A.

Recommended By:		6-16-17
	Department Director	Date
Approved By:		6/30/17
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT *	0				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes _____ No _____

Budget Account No.: N/A

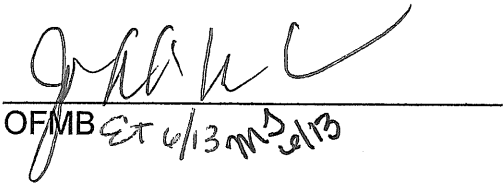
B. Recommended Sources of Funds/Summary of Fiscal Impact: N/A

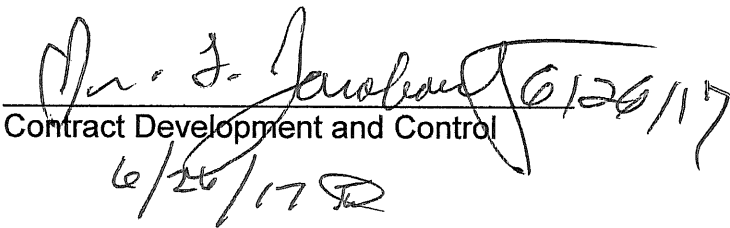
*All costs to be borne by the Housing Finance Authority. No fiscal impact to Palm Beach County.

C. Departmental Fiscal Review: N/A

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:


OFMB 6/13/17


Contract Development and Control 6/26/17

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

RESOLUTION NO. 2017- 04

A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA; APPROVING REVISIONS TO THE AUTHORITY'S CONTRACTS FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES WITH GREENBERG TRAURIG P.A. AND BRYANT MILLER OLIVE P.A., RESPECTIVELY; AUTHORIZING THE AUTHORITY TO ENTER INTO AMENDMENTS TO THE TO SUCH CONTRACTS; AUTHORIZING THE PROPER OFFICERS OF THE AUTHORITY TO DO ALL THINGS NECESSARY OR ADVISABLE IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE FOR THIS RESOLUTION.

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida (the "Board"), has heretofore enacted an ordinance, as amended, creating the Housing Finance Authority of Palm Beach County, Florida (the "**Authority**"), pursuant to the provisions of Part IV of Chapter 159, Florida Statutes, as amended and supplemented (the "**Act**"); and

WHEREAS, the Board has heretofore adopted a resolution declaring a need for the Authority to function in order to alleviate the shortage of housing and capital for investment in housing within Palm Beach County, Florida (the "**County**"); and

WHEREAS, the Authority previously entered into a Contract for Bond and Disclosure Counsel Services dated as of April 13, 2012 (the "**Contracts**") with each of Greenberg Traurig, P.A. and Bryant Miller Olive P.A. ("**Bond and Disclosure Counsel**") to provide bond counsel and disclosure counsel services to the Authority; and

WHEREAS, Bond and Disclosure Counsel, by letter to the Authority dated April 24, 2017, requested modifications to the fee schedules set forth in the Contracts; and

WHEREAS, the Authority has agreed to modify said fee schedules as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA:

Section 1: Recitals. The foregoing recitals stated above are hereby found by the Authority to be true and correct and incorporated into this Resolution.

Section 2: Findings. During the period in which Bond and Disclosure Counsel have been serving as bond and disclosure counsel to the Authority, and particularly since the

Contracts were entered into, there have been many changes in both the law and in the structuring of financings for multifamily housing projects. Neither the Authority nor its professional staff dictate or have any control over the structures. In a typical multi-family bond Issue, a borrower applies to the Authority with a proposed financing structure. Due to increased regulation and cost to obtain financing from governmental and private credit enhancers and/or private bondholders, borrowers are now bringing structures to the table that involve several layers of financing, each necessary to accomplish the project. Very often the tax exempt construction or rehabilitation phase is credit enhanced by one party and the permanent phase by another. Additional layers of financing include taxable bonds, tax credit equity and multiple other sources of subordinate debt, including SAIL financing from the Florida Housing Finance Corporation, county and city housing development funds and subordinate debt held by a seller and/or other lender. All of these different layers involve different sets of documents that need to be drafted and/or reviewed by Bond and Disclosure Counsel. In addition, because there are competing interests among the various parties and layers of financing, comments on the documents are voluminous and often inconsistent, the resolution of which takes an inordinate amount of time. Transactions that used to close within a few months with just a few all party meetings, now often take over a year and involve weekly conference calls that can last several hours. All of this work necessary to get to a successful closing involves a substantial amount of attorney time. It is not atypical that there will be over 75 closing items at the closing table for a multi-family Bond Issue.

With respect to disclosure, if any multi-family bond Issue is to be publicly offered, an offering document would have to be prepared by Disclosure Counsel. In light of the various levels of drafting and evidencing the rights and remedies of the various principals, the necessary disclosures are complicated. There is also heightened scrutiny by the Securities and Exchange Commission and the Internal Revenue Service concerning initial disclosure,

continuing disclosure and compliance with the Internal Revenue Code and applicable regulations. The securities and tax analysis and resulting attorney time involved with these complicated structures are significantly greater than in years past.

Section 3: Modification of Fee Schedule. The Authority approves modifying the Fee Schedule attached as Exhibit "A" to each of the Contracts as set forth on Exhibit "A" hereto. Said modified Fee Schedule shall take effect upon execution of amendments to the Contracts by Bond and Disclosure Counsel and the Authority, and shall apply to all bond issues that have not closed.

Section 4. Authority to Enter into Amendments to Contracts. The Authority is authorized to enter into amendments to the Contracts consistent with the provisions of this Resolution. Such amendments shall be in such form as may be approved by the Chairperson or other member of the Authority executing such documents, with the advice of the Executive Director of the Authority and general counsel to the Authority, such execution and delivery to be conclusive evidence of the approval and authorization thereof by the Authority.

Section 5. Severability. In case any one or more of the provisions of this Resolution, or of agreements approved hereby or any other agreements to which the Authority is a party and which have been approved by the Authority, shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any of the other provisions of this Resolution or of such agreements.

Section 6. Further Actions; Effectiveness of Approval. The Chairperson, the Vice Chairperson, the Secretary of the Authority and the other members of the Authority, the Executive Director of the Authority, and the Authority's general counsel, are hereby authorized and directed to do all acts and things required of them by the provisions of this Resolution, the agreements herein approved or any other agreements to which the Authority is a party and which have been approved by the Authority.

Section 7. Headings Not Part of this Resolution. Any headings preceding the texts of the several sections of this Resolution shall be solely for convenience of reference and shall not form a part of this Resolution, nor shall they affect its meaning, construction or effect.

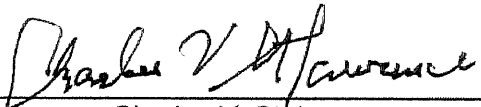
Section 8. Resolution Effective. This Resolution shall take effect immediately upon its adoption.


ADOPTED this 12th day of May, 2017.

(SEAL)

**HOUSING FINANCE AUTHORITY OF
PALM BEACH COUNTY, FLORIDA**

ATTEST:

By: 
Name: Charles V. St. Lawrence
Title: Chairperson

By: 
Name: David Brandt
Title: Assistant Secretary

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY


By: 
Name: Morris G. (Skip) Miller, Esq.
Title: Attorney

EXHIBIT A
BOND COUNSEL FEE SCHEDULE

- | | | |
|-----|---|--|
| (1) | Single Family Bonds: | |
| | (a) For each issue up to \$40,000,000 principal amount (short term bonds and taxable bonds all issued at the same time constitutes one issue if issued under same Indenture): | \$45,000 flat fee |
| | (b) If single family issue is in excess of \$40,000,000: | \$45,000 plus \$1.25 per \$1,000 in excess of \$40,000,000 |
| (2) | Mortgage Credit Certificates: | |
| | For each issue, regardless of principal amount: | \$15,000 flat fee |
| (3) | Sale of GNMA Certificates; Fannie Mae Securities, whole mortgage loans, including defeasance and bankruptcy opinion, if required: | \$15,000 flat fee |
| (4) | Multifamily Bonds - New, Refunding & Reissuances | |
| | (a) For structures which do not require Bond Counsel to draft real estate documents: | \$50,000 <u>\$60,000</u> flat fee |
| | (b) For each additional series of bonds issued under the same Indenture: | \$7,500 per additional series |
| | (c) For each change in bond structure after documents have been drafted based on another structure: | \$5,000 <u>\$7,500</u> additional per each structure change |
| | (d) For structures which required Bond Counsel to draft real estate documents: | \$60,000 <u>\$70,000</u> flat fee |
| | (e) If an issue requires separate indentures for separate series of bonds to finance a single project, using different bond structures, for each additional indenture: | 65% of the total Bond Counsel fee due on the first Indenture |

- (5) 501(c)(3) bonds:
- (a) For structures which do not require Bond Counsel to draft real estate documents: \$~~70,000~~ \$80,000 flat fee plus \$250 per billable hour to review exempt organization tax issues
 - (b) For each additional series of bonds issued under the same Indenture: \$~~10,000~~ \$12,000 additional per series
 - (c) For each change in bond structure after documents have been drafted based on another structure: \$~~5,000~~ \$7,500 additional per each structure change
 - (d) For structures which require Bond Counsel to draft real estate documents: \$80,000 flat fee plus \$250 per billable hour to review exempt organization tax issues
 - (e) If an issue requires separate indentures for separate series of bonds to finance a single project, using different bond structures, for each additional indenture: 65% of the total Bond Counsel fee due on the first Indenture
- (6) Post Issuance Services at request of a Borrower:
- (a) Bond Counsel Opinion required for requested action but no document amendments required (such as change in credit facility or conversion to permanent loan under Fannie Mae program): \$7,500 flat fee
 - (b) Bond Counsel Opinion required in connection with Indenture and/or financing agreement amendments to be drafted by Bond Counsel which do not rise to a reissuance of the Bonds: the greater of actual attorney time or \$10,000
 - (c) Change of ownership of financed project; preparation of Assignment and Assumption Agreement but no document amendments: the greater of actual attorney time or \$15,000 (includes any required Bond Counsel opinion)

- (d) Change of Ownership of financed project; preparation of Assignment and Assumption Agreement with document amendments which do not rise to a reissuance of the Bonds:

the greater of actual attorney time or \$17,500 (includes any required Bond Counsel opinion)
 - (e) Additional services requested by the Borrower not described above:

Firm will negotiate an hourly fee or fixed fee with Borrower prior to commencing work. Such additional fee will not exceed 15% of contract fee without the Authority's approval.
- (7) Disclosure Counsel:
 - (a) For each bond issue, a flat fee for each separate offering document (except that a preliminary and final offering document for a series of bonds shall be treated as one offering document):

\$25,000 flat fee for cash collateralized bond issues

\$35,000 flat fee for non cash collateralized bond issues