



City of Grand Island

Tuesday, September 22, 2015

Council Session

Item G-8

**#2015-252 - Approving Municipal Advisory Services Agreement
with Smith Hayes Financial Services Corporation**

Staff Contact: William Clingman, Interim Finance Director

Council Agenda Memo

From: William Clingman, Interim Finance Director

Meeting: September 22, 2015

Subject: Approving Municipal Advisory Services Agreement with Smith Hayes Financial Services Corporation

Presenter(s): William Clingman, Interim Finance Director

Background

In recent years the SEC has begun to look more closely at bond issuances for Municipalities. They have also limited the ability of bond underwriters to act in an advisory capacity while also underwriting bonds for a municipality. This is primarily because bond underwriters do not have a fiduciary duty to the City, as they are required to state in their disclosure statements before underwriting a bond. However, Municipal Advisors do have a fiduciary duty to the municipality they work for and are able to assist with many bond related tasks. The Municipal Advisor role is more widely used in other States, but is beginning to be used within Nebraska.

Discussion

The contract with Smith Hayes will designate them as the Municipal Advisor for the City of Grand Island. They would then have a fiduciary duty, or responsibility to act in the best interest of the City, to the City of Grand Island when working as a Municipal Advisor. One of their routine services would be to evaluate existing bonds for re-bonding opportunities that would result in an overall savings to the City. They would also work with the City's bond attorney to ensure timely and accurate reporting for all current bond issuances. Finally, they would be available to answer questions related to debt issuances in general.

The contract provides an annual payment of \$5,000 for the above services. If the City decides to pursue an actual debt issuance an additional fee would be paid to Smith Hayes, which is dependent upon the amount of debt issued. When the City issues debt Smith Hayes would draft and put out for bid an RFP related to that specific issuance. This would be done each time debt is issued in order to ensure the best rates are obtained. The City Attorney's office has reviewed and approved the contract as presented.

It should also be noted that Smith Hayes does function as a bond underwriter for other municipalities. They would be unable to do that for the City of Grand Island if they are the Municipal Advisor for the City. The two roles are mutually exclusive. In fact, Smith Hayes Financial Services Corporation would be unable to purchase bonds issued by the City of Grand Island on the primary market.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the contract with Smith Hayes Financial Service Corporation
2. Disapprove or deny contract
3. Refer to a committee

Recommendation

City Administration recommends that the Council approve the contract with Smith Hayes Financial Services Corporation.

Sample Motion

Move to approve the contract with Smith Hayes Financial Services Corporation.

September 22, 2015

City of Grand Island, Nebraska

Re: Municipal Advisory Services Agreement

Ladies and Gentlemen:

On behalf of SMITH HAYES Financial Services Corporation (“we” or “SMHS”), we thank you for the opportunity to serve as exclusive independent municipal financial advisor to the City of Grand Island, Nebraska (“you” or the “City”). This Agreement will establish the terms and conditions under which SMHS will provide municipal financial advisory services to the City in connection with the public finance market.

1. Financial Advisory Services to be Provided by SMHS. The City hereby engages SMHS to serve as its independent municipal financial advisor and in such capacity SMHS agrees to provide financial advisory services, consultant services, and, which may include but are not limited to, the services described on Exhibit A in accordance with industry practices and in the best interest of the City.

Under MSRB Rule G-23, SMHS will not be able to serve as underwriter or placement agent for any notes, bonds or other securities to be issued and sold as part of the Financing. As financial advisor, SMHS’s role is to provide financial advisory and consultant services with respect to the issuance(s) of securities as set forth on Exhibit A. As financial advisor, SMHS acknowledges it has a fiduciary duty under federal securities law to act in the best interests of the issuer without regard to its own financial or other interests. SMHS’s fiduciary duties include the duty of care and the duty of loyalty. SMHS is registered as a municipal advisor with the Securities Exchange Commission and Municipal Securities Rulemaking Board.

2. Fees and Expenses. For its financial advisory services, SMHS shall be entitled to certain fees (the “Financial Advisory Fee”) to be paid by the City as described on Exhibit B. In addition, the City shall reimburse SMHS for all out-of-pocket costs and expenses it reasonably incurs in connection with the services it provides hereunder; provided, however, that such costs and expenses shall not exceed \$1,000 per annum without the City’s prior written consent.

3. Term and Termination. This Agreement shall be for an initial term beginning on the date this agreement is executed (the “Effective Date”) and ending on September 30, 2019,

subject to earlier termination pursuant to the provisions of Paragraphs 6 and 7 hereof. Effective at the end of each fiscal year, beginning October 1, 2019, the term of this Agreement shall be automatically extended for an additional year beyond the then end of the term unless one party gives the other party notice, not less than ninety (90) days prior to the end of a fiscal year, that such party does not agree to such extension of the term. Notwithstanding the forgoing, either party may terminate SMHS's engagement at any time without liability or penalty upon at least 30 days' prior written notice to the other party. If SMHS's engagement is terminated by the City, the City agrees to compensate SMHS for the services provided and to reimburse SMHS for its out-of-pocket expenses incurred through the date of termination and if within 12 months following such termination the City completes a financing which SMHS provided any financial advisory services on the City shall pay SMHS Transaction Related Fee described on Exhibit B, section 2.

4. Indemnification: Limitation of Liability. The City agrees that neither SMHS nor its employees, officers, agents or affiliates shall have any liability to the City for the services provided hereunder except to the extent it is judicially determined that SMHS engaged in gross negligence, willful misconduct, knowing violation of law or a breach of its fiduciary duty. In addition, to the extent permitted by applicable law, the City shall indemnify, defend and hold SMHS and its employees, officers, agents and affiliates harmless from and against any losses, claims, damages and liabilities that arise from or otherwise relate to the City's acts or omissions taken or omitted in connection herewith, or the transactions and other matters contemplated hereby, except to the extent such losses, claims, damages or liabilities are judicially determined to be the result of SMHS's gross negligence, or willful misconduct, knowing violation of law or breach of fiduciary duty. To the extent permitted by applicable law, SMHS shall indemnify, defend and hold the City and its employees, officers, agents and affiliates harmless from and against any losses, claims, damages and liabilities that arise from or otherwise relate to SMHS's acts or omissions taken or omitted in connection herewith, or the transactions and other matters contemplated hereby, to the extent such losses, claims, damages or liabilities are judicially determined to be the result of SMHS's gross negligence, or willful misconduct, knowing violation of law or breach of fiduciary duty.

5. Records and Accounts. SMHS shall maintain all records and accounts in connection with the financial advisor services performed pursuant to this Agreement in the manner and for at least the length of time prescribed by federal and state laws, rules and regulations governing financial advisors.

6. Ownership of Documents. All studies, reports, documents, estimates, summaries and any other written materials produced, created or accumulated in performing this Agreement and delivered to the City are and shall remain the property of the City and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to SMHS.

7. Termination for Default. Either party may terminate this Agreement for failure of the other party to fulfill or promptly fulfill its covenants or obligations under this Contract.

(a) Upon a breach by one party of any covenant or obligation under this Agreement, the non-breaching party shall send written notice of such breach to the other party. If the party in breach does not cure or remedy such breach within 30 business days of receiving such written notice, the nonbreaching party may terminate this Agreement immediately.

(b) If this Agreement is terminated by reason of a default of the Financial Advisor prior to the completion of Financial Advisor Services under this Agreement, the Financial Advisor shall immediately assign to the City, at the City's discretion, any contracts and/or agreements relative to this Agreement entered into between the Financial Advisor and its subcontractors and consultants. SMHS also shall (i) immediately discontinue all work and services affected (unless the notice directs otherwise), and (ii) upon payment for work performed, promptly deliver to the City all studies, reports, documents, specifications, calculations, plans, estimates, summaries and other information and materials accumulated in performing this Agreement.

8. Notices. All notices given pursuant to this Agreement shall be in writing, delivered or mailed by United States mail, postage prepaid or e-mailed (with hard-copy follow-up by mail or delivery) and addressed as follows:

To the City: City of Grand Island
100 E First Street
Grand Island, NE 68801
Attention: City Treasurer
E-mail: finance@grand-island.com

To the Financial Advisor: SMITH HAYES Financial Services Corporation
1225 L Street, Suite 200
Lincoln, NE 68508
Attention: Blaine Spady
E-mail: bspady@smithhayes.com

9. Nonwaiver. Failure by either party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law, or failure by either party to notify the other party properly in the event of default, or the acceptance of or payment for service or review or approval of any document shall not release either party from any of the obligations of this Agreement and shall not be deemed a waiver of any right of either party to insist upon strict performance hereof or any of its rights or remedies to a prior or subsequent default hereunder.

10. Regulatory Change. In the event of a change of law, rule or regulation that affects or imposes additional duties or costs upon the advisory services provided under this Agreement (a "Change"), you agree to negotiate in a commercially reasonable manner such modifications to this Agreement as we may reasonably request in order to (i) enable us to comply with such Change, (ii) allocate any new or additional costs between the parties or (iii) otherwise address the

effect of such Change upon the advisory services provided under this Agreement. If the parties are unable to agree promptly on the requested modifications to this Agreement, we may terminate this Agreement upon notice to you.

11. Severability. In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Agreement.

12. Entire Agreement. This Agreement, including its Exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the City and SMHS concerning this Agreement. Neither the City nor SMHS has made or shall be bound by any agreement or any representation to the other concerning this Agreement, which is not expressly set forth or incorporated by reference herein.

13. Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska

14. Authority of the Parties. Each of the parties to this Agreement, and each person signing this Agreement on behalf of such party, represents and warrants to the other party to this Agreement as follows: (a) that such party has full power and authority to execute, deliver and carry out the terms and provisions of this Agreement; (b) that such party has taken all necessary action to authorize the execution, delivery and performance of this Agreement; (c) that the individual(s) and/or entities executing this Agreement on such party's behalf have the authority to bind it to the terms and conditions of this Agreement; and (d) that this Agreement has been duly executed and delivered by such party.

15. Parties Bound. This Agreement shall be binding upon and inure to the benefit of all parties. This Agreement is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.

16. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

If there is any aspect of this Agreement that you believe requires further clarification, please do not hesitate to contact us. If the foregoing is consistent with your understanding of our engagement, please sign and return the enclosed copy of this letter.

Again, we thank you for the opportunity to assist you with the Financing and the confidence you have placed in us.

Very truly yours,

SMITH HAYES Financial Services Corporation

By: _____

Title: Vice President

Accepted this ____ day of September, 2015.

City Of Grand Island

By: _____

Title: _____

**EXHIBIT
A**

EXHIBIT A

**SCOPE OF SERVICES
FINANCIAL ADVISOR**

SMHS will provide Municipal Financial Advisor Services, which may include, but are not limited to:

A. Strategic Services

1. Project feasibility
 - (a) Evaluate assumptions for feasibility provided by the City and provide analysis of feasibility of debt structure. Coordinate with Bond Counsel to determine City's authority, restrictions and requirements to issue debt for the project.
 - (b) On request meet with planning officials to assist with planning issues.
 - (c) On request participate and make recommendations regarding scope, cost and timing of projects.
 - (d) Participate and conduct cash flow analysis from proposed cost of improvements and current market conditions.
 - (e) Estimate the aggregate principal amount and timing of issuance of debt based on project plan.
 - (f) Advise City as to optimal financing structure.
2. Based on current market conditions evaluate funding options.
3. Provide the City with an impact analysis on cost changes to cash flow, debt issuance, budget and Bond and General Fund levies.
4. Conduct periodic analysis of the outstanding debt of the City.
 - (a) Meet with the City to establish timing parameters for a particular financing and identify financing needs and issues.
 - (b) Attend meetings of the City, as requested and respond to the City's general or specific inquiries regarding its debt.

B. Post-Issuance Services

1. Assist City in preparing and submitting continuing disclosures as they relate to updated financial information, including compiling updated data and assisting Dissemination Agent with ongoing disclosure obligations of the City pursuant to SEC Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, as applicable. Such information shall include annual operating data, annual audit and material event filings.
2. Research and advise the City concerning aspects of tax exemption and arbitrage on existing debt in cooperation with Bond Counsel, City Accountant and City Attorney, including helping coordinate post issuance compliance obligations of the City.
3. Annual budget analysis and recommendations
 - (a) Provide information for annual budget cash flow analysis for debt service as requested.
 - (b) Make recommendations for DSRF cash management, and adjust structure to best suit current market conditions as needed.
4. Track outstanding bond debt and Notify the City of potential refunding opportunities, identifying specific full or partial issues that may qualify to be refunded based on current or forecasted market conditions.

C. Transaction-Related Services

1. Provide independent financial advice and serve solely in the interest of the City.
2. Analyze and provide comments on various financing structures. The analysis will cover such issues as advantages and disadvantages of each financing alternative, risk analyses, legal constraints, and other aspects of financings where appropriate.
3. Assist in the preparation of necessary reports and documents to support the issuance of debt obligations, including, but not limited to: cash-flow-analysis statements, debt-service projections and models, verification of revenue estimates, and projections of market feasibility.
4. To the extent directed to do so by the City, advise on and manage a competitive bid process or a negotiated request for proposal process for investment banking and underwriting services, bond attorneys, financial printers, auditors, accountants paying agents/registrars, trustees, and other consultants, and provide advise

regarding which providers offer the greatest value (service relative to cost) to the City.

5. Participate in drafting and reviewing relevant bond documents, including but not limited to: preliminary and final official statements, bond resolution and indentures, and leases and contracts.
6. Participate, if requested, in informational, due-diligence or other financing-related meetings.
7. Assist in the development of comprehensive marketing plan, including identification of potential investors and market conditions for alternative products in order to achieve the lowest cost of borrowing.
8. Determine the benefits of and assist in the negotiation to obtain bids for bond insurance, letters of credit, or any other type of credit enhancement that is cost-effective for the transaction at-hand.
9. Work with the City to establish credit rating targets for proposed financing and devise an appropriate plan of action. Assist in preparing for and participate in meetings with rating agencies, credit enhancers, investors, or stockholders related to financing.
10. Prepare and discuss marketing conditions (including “comparables”) and preliminary pricing scales, syndicate rules, syndicate price views, and marketing compensations for the transaction at-hand.
11. Participate in discussions with City staff upon the occurrence of unexpected events regarding the effect on the City’s proposed debt issuance, and assist City staff in developing response strategies.
12. Work cooperatively with other financing team participants, including investment banks and other professional firms engaged by the City.
13. SMITH HAYES will follow the procurement procedures as outlined in Chapter 27 of the Grand Island City Code.

EXHIBIT B

FEES
FINANCIAL ADVISOR CONTRACT

Under the terms of this Contract, the Financial Advisor agrees to perform the Financial Advisor Services described in this Contract. The City agrees, in accordance with the limitations and conditions set forth in the Contract, to compensate the Financial Advisor as follows:

1. Exhibit A, Section A and B. (Strategic Services and Post-Issuance Services). For providing Strategic Services and Post-Issuance Services, the Financial Advisor shall receive a fixed annual fee equal to:
 - (a) Flat fee of \$5,000 per annum. Such fees shall be payable on execution of this Contract and annually thereafter.

2. Exhibit A, Section C (Transaction Related Services). For providing Transaction-Related Services related to the issuance, refinancing or restructuring of any bonds, notes, loans, warrants or other obligations of the City, there will be a staggered fee for structuring the financing which is the sum of the following amounts based on the size of the transaction:

<u>PAR Amount</u>	<u>Fee</u>
\$0 to \$1,000,000	\$5,000
On the next \$1,000,001 to \$5,000,000	0.500%
On the next \$5,000,001 to \$10,000,000	0.400%
On the next \$10,000,001 to \$20,000,000	0.350%
On the next \$20,000,001 to \$30,000,000	0.300%
and over \$30,000,001 and up negotiated	

RESOLUTION 2015-252

WHEREAS, the City of Grand Island wants to hire a Municipal Advisor; and

WHEREAS, the City has discussed the potential service with Smith Hayes Financial Services Corporation; and

WHEREAS, Smith Hayes Financial Services Corporation will charge the City \$5,000 on an annual basis for these services; and

WHEREAS, Smith Hayes Financial Services Corporation will charge the City a defined fee for debt issuances they formulate.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island be, and hereby is, authorized to enter into the Agreement with Smith Hayes Financial Services Corporation.

BE IT FURTHER RESOLVED, that they Mayor is hereby authorized and directed to execute such Agreement on behalf of the City of Grand Island.

Adopted by the City Council of the City of Grand Island, Nebraska, September 22, 2015.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
September 18, 2015	☐ City Attorney