

RESOLUTION NO. 02-06-78

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE PROPOSAL FOR SPECIAL COUNSEL AND BOND COUNSEL SERVICES FROM RUDEN, McCLOSKEY, SMITH, SCHUSTER & RUSSELL, P.A., TO THE CITY OF MARATHON WITH A COST NOT TO EXCEED \$75,000.00 PLUS OUT-OF-POCKET COSTS, PAYABLE AT CLOSING OUT OF THE BOND PROCEEDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council hereby approves the Proposal from Ruden, McClosky, Smith. Schuster & Russell, P.A., for Special Counsel and Bond Counsel Services to the City of Marathon; and

WHEREAS, the Proposal covers the services to be provided to the City in connection with the City's efforts to plan and finance a wastewater treatment plant and related facilities to provide wastewater treatment services with the City.


NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

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

Section 2. **Proposal.** Said Proposal for the services outlined above to be provided under Ruden, McClosky, Smith, Schuster & Russell, P.A., attached hereto as Exhibit "A", is hereby approved.

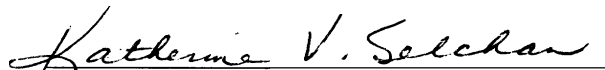
Section 3. **Effective Date.** This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 11th day of June, 2002.



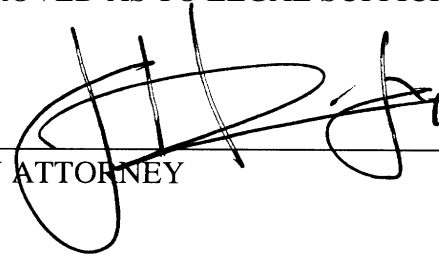
JOHN BARTUS, MAYOR

ATTEST:



Katherine V. Selchan
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

#5742v1.ks.061102

RUDEN
MCCLOSKEY
SMITH
SCHUSTER &
RUSSELL, P.A.
ATTORNEYS AT LAW

200 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FLORIDA 33301

POST OFFICE BOX 1900
FORT LAUDERDALE, FLORIDA 33302

(954) 527-2406
FAX: (954) 333-4006
MICHAEL.KRUL@RUDEN.COM

June 3, 2002

Craig Wrathell, City Manager
City of Marathon
210 North University Drive
Suite 702
Coral Springs, FL 33071

Re: Special Counsel and Bond Counsel Services to the City of Marathon,
Florida ("City")

Dear Mr. Wrathell:

Thank you for considering this firm ("Firm") to provide services to the City in connection with the City's efforts to plan and finance a wastewater treatment plant and related facilities to provide wastewater treatment services within the City.

We anticipate that the required services would be performed in two distinct phases. During Phase I, this Firm, as Special Counsel to the City, would analyze and determine the rights of the City to provide wastewater services in view of the potentially overlapping authority of the Florida Keys Aqueduct Authority ("FKAA"); negotiate agreements, if necessary with the FKAA to enable the City to proceed with the wastewater plant project; analyze the City's authority to legislatively require property owners within the City to connect to the City's propose wastewater system; work with the City attorney, on any litigation that arises in connection with the foregoing issues; and perform such other services as are necessary or requested by the City in connection with reaching a determination that the City has the requisite power and authority to proceed with the wastewater project and as may be necessary to induce a reputable underwriter to become part of the City's financing team based upon its determination that the wastewater project is financeable. These determinations will conclude Phase I.

Phase II will involve the services we would provide to the City as bond counsel in connection with the wastewater treatment plant financing. The financing will involve the issuance of limited obligation revenue bonds of the City payable from revenue sources derived from operation of the wastewater treatment plant and/or assessments levied in

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connection therewith (the "Bonds"). As bond counsel, our primary responsibility will be to render an objective legal opinion with respect to the authorization and issuance of the Bonds. In that regard, we will examine applicable law, prepare the resolutions authorizing and securing the Bonds and other authorizing documents, consult with the parties to the transaction prior to the issuance of the Bonds, review certified proceedings, and undertake such additional duties as we deem necessary to render the opinion.

Assuming completion of the proceedings to our satisfaction, we will render our opinion, subject to customary assumptions and limitations, that:

(i) the City is a municipal corporation organized and existing under the laws of the State of Florida with the power to adopt any ordinances and/or resolutions relating to the issuance of the Bonds and to perform its obligations thereunder and to issue the Bonds;

(ii) the ordinances and/or resolutions relating to the issuance of the Bonds have been duly adopted by the City and create a valid lien on the funds or assets pledged thereby for the security of the Bonds and constitute a valid and binding obligation of the City enforceable against the City in accordance with their terms;

(iii) the issuance and sale of the Bonds has been authorized by the City and upon proper execution and authentication, the Bonds constitute valid and binding obligations of the City payable in accordance with, and as limited by, the terms of the ordinance and resolutions under which they were issued; and

(iv) in appropriate circumstances, the interest paid on the Bonds will be excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations.

Our opinion will be executed and delivered on the date the Bonds are exchanged for their purchase price and will be based on facts and laws existing as of its date. Upon delivery of our opinion, our responsibilities as bond counsel will be concluded with respect to that particular financing. Specifically, but without limitation, we do not undertake (unless separately engaged) to provide continuing advice to the City or any other party concerning any actions necessary to assure that interest paid on the tax-exempt Bonds will continue to be excluded from gross income for federal income tax purposes.

In rendering our opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation. We do not review the financial condition of the City, the feasibility of any project to be financed by Bond proceeds, or the adequacy of the security provided to Bond owners and will express no opinion relating thereto.

Craig Wrathell, City Manager
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In performing services as bond counsel, our client will be the City and we will represent its interests. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in any transaction. Our representation of the City does not alter our responsibility to render an objective opinion as bond counsel.

As bond counsel, we will not assume or undertake responsibility for the preparation of an Official Statement or any other disclosure document with respect to the Bonds, nor shall we be responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document. However, if a disclosure document will be adopted or approved by the City, our responsibility will include the preparation or review of any description therein of Florida and federal law pertinent to the validity of the Bonds and the tax treatment of interest paid thereon, the terms of the Bonds and our opinion.

Since it is impossible at this time to determine or even estimate the amount of time that will be required to complete Phase I, we would propose to perform those services in return for fees that will be charged on an hourly basis. In that regard, we are prepared to perform the Phase I services at a 15% discount off of standard hourly rates, plus out-of-pocket costs, as further described hereafter. The City may establish a maximum amount of fees to be incurred under Phase I and we will use our best efforts to monitor the time being incurred and advise the City if and when they are approaching the maximum and this Firm will not perform additional services unless expressly requested by the City once the maximum has been reached.

In connection with Phase II, our fee for Bond counsel services will be \$75,000 plus out-of-pocket costs, payable at closing out of the Bond proceeds. Reimbursable expenses include charges such as long distance telephone calls, telecopy charges, postage, federal express, photocopying and travel expenses. The amount of these charges will depend on a number of factors, some of which are in the control of the City. These factors include the number of meetings that are needed to finalize the documentation, the number of drafts or documents or redrafts of the documents that may be necessitated for changes in structure or changes in project scope and the number of persons to whom copies of all documents must be sent. Without additional charge, we will undertake primary responsibility for handling the Bond validation proceeding at the circuit court level. If any appeals are taken therefrom and you want this Firm to be involved in the appeal, we would have to agree upon an additional fee to handle the appeal.

If the foregoing is acceptable to you, please have the appropriate officer of the City indicate the City's acknowledgment and acceptance thereof in the space provided for that purpose on the enclosed photocopy of this letter. Such execution will evidence the City's retention of Ruden, McClosky as special counsel and bond counsel upon the terms and conditions set forth herein.

Craig Wrathell, City Manager
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If you have any questions or comments concerning the foregoing, please do not hesitate to contact the undersigned.

Very truly yours,

RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.




Michael H. Krul

MHK/sls
Enclosures

**THE FOREGOING IS AGREED
AND ACCEPTED THIS 11th DAY
OF June, 2002.**

CITY OF MARATHON, FLORIDA

By: 
Title: MAYOR