

Agenda
City of Dunnellon
Special City Council Meeting
20750 River Drive, Dunnellon, FL 34431
July 19, 2016
11:00 A.M.

PLEASE NOTE: Individuals wishing to address the City Council please sign in. A three-minute time limit will be administered. PLEASE TURN CELL PHONES OFF.

Call to Order

Pledge of Allegiance

Opening Prayer/Moment of Silence (suggested time limit: 1 minute
Mayor to request if any invitee is present to open with prayer; if no invitee is present, Mayor will ask if a Dunnellon citizen will volunteer. If no volunteers, a moment of silence will be offered. If a citizen outside of Dunnellon requests to open with prayer, (s)he may so if no invitees/citizens volunteer.)

Roll Call

Proof of Publication (Posted on the City's website and City Hall bulletin board on Friday, July 15, 2016)

Chairman's Comments Regarding Agenda
Public Comments

REGULAR AGENDA

1. BOND COUNSEL SERVICES AGREEMENT #AGR2016-34 WITH BRYANT MILLER OLIVE FOR REFINANCING OF THE BB&T LOAN

PROPOSED MOTION: I move the Mayor be authorized to sign Agreement #AGR2016-34 in the amount of \$20,000 with Bryant Miller Olive.

Documents:

[AGR2016_34_DunnellonEngagementLtr20160713.pdf](#)

2. FLORIDA FIBER RESPONSE TO CITY'S PROPOSED SETTLEMENT OF OUTSTANDING CHARGES

Documents:

[Re_Outstanding amounts owed reconciliation.pdf](#)
[FFN_Ltr.pdf](#)

3. ADJOURN

PROPOSED MOTION: I move the City Council meeting be adjourned.

ANY PERSON REQUIRING A SPECIAL ACCOMMODATION AT THIS HEARING BECAUSE OF A DISABILITY OR PHYSICAL IMPAIRMENT SHOULD CONTACT THE CITY CLERK AT (352) 465-8500 AT LEAST 48 HOURS PRIOR TO THE PROCEEDING. IF A PERSON DESIRES TO APPEAL ANY DECISION WITH RESPECT TO ANY MATTER CONSIDERED AT THE ABOVE MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDING, AND FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY IS NOT RESPONSIBLE FOR ANY MECHANICAL FAILURE OF RECORDING EQUIPMENT.

July 13, 2016

City Council, City of Dunnellon
20750 River Drive
Dunnellon, Florida 34431

Re: Bond Counsel Services Agreement

Gentlemen:

We are pleased to have an opportunity to offer the following as our agreement to serve as bond counsel to the City of Dunnellon, Florida (the "City"). We propose that our services and responsibilities as bond counsel include the following:

BASIC SERVICES

1. Review of financing documents in connection with participation by the City in any bond or note pool, if applicable.
2. Preparation of all resolutions and other basic agreements and documents which may underly any proposed financing; and advice regarding escrow structuring for refunding issues.
3. Preparation of validation pleadings, research with respect to the pertinent legal issues and advice and consultation with respect to the validation hearing, if the bonds, notes or lease-purchase agreements (collectively, the "Bonds") are validated; participation in the validation hearing at the trial court level to the extent requested by the City Attorney; and, if necessary, appellate services before the Florida Supreme Court.
4. Services in connection with the sale of the Bonds, including preparation of the resolution authorizing the sale of the Bonds, and the notice of sale and bid forms (if the Bonds are sold at public sale); review of the bond purchase contract (if the Bonds are sold at negotiated sale to an investment banker); review of the bank loan commitment (if

the Bonds evidence a negotiated private placement with a commercial bank); limited assistance in the preparation of the official statement for the Bonds (if the Bonds are publicly offered); and preparation of Bond certificates.

5. If the Bonds bear interest at variable rates per annum (and include liquidity providers) and/or if any interest rate swap agreements or other derivative or "hedging" products (collectively, the "Derivatives") are used in connection with the Bonds, review of the documentation for the liquidity facility and the Derivatives, as applicable. Also, if any guaranteed investment contracts ("GIC's") dealing with the investment of Bond proceeds are utilized, review of the GIC's. *However, please be aware that as bond attorneys, we do not provide financial advice to our clients and are never involved in the recommendations by financial advisor professionals to use a Derivative and/or GIC in connection with any financing.*

6. Preparation of all necessary closing documents used in connection with the delivery of the Bonds.

7. Issuance of our opinion with respect to the validity of the Bonds and exemption of interest thereon from federal income taxation (as applicable), including review and analysis of all information necessary in order to deliver such an opinion.

8. Attendance at the Bond closing and, as necessary, planning, document drafting and negotiating sessions.

9. Additional services requested by City staff.

Furthermore, and if applicable, our firm would serve as disclosure counsel to the City, at your request, and assume responsibility for preparation of the official statement for the Bonds and the preparation of the continuing disclosure agreement in order to address the anti-fraud provisions of SEC Rule 10b-5 and the requirements of SEC Rule 15c2-12. We would render the appropriate opinions to you as our client. However, assumption of this additional responsibility would be for a separate additional fee based upon the current hourly rate or rates of the attorneys assigned to this task or such other fee negotiated with the City.

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. We have disclosed to the City that we have, and may in the future, serve as bond, disclosure or other counsel to other local governments or otherwise act as underwriter's counsel on public finance matters in Florida. From time to time, we may represent the firm or firms which may underwrite the City's bonds, notes or other obligations (and other financial institutions hired by the City)

on financings for other governmental entities in Florida on unrelated matters. In either case, such representations are standard and customary within the industry and we can effectively represent the City and the discharge of our professional responsibilities to the City will not be prejudiced as a result, either because such engagements will be sufficiently different or because the potential for such prejudice is remote and minor and outweighed by consideration that it is unlikely that advice given to the other client will be relevant in any respect to the subject matter, and the City expressly consents to such other representations consistent with the circumstances herein described. The City acknowledges and agrees that our role as bond counsel, disclosure counsel, or counsel to any local governmental entity or financial institution or in conjunction with public finance transactions is not likely to create or cause any actual conflict, and service as disclosure counsel, bond counsel, or counsel to other clients of ours will not per se be construed as a conflict or be objectionable to the City. However, the City reserves the right to identify a representation that it finds objectionable in the future, in which case we agree to take appropriate steps to resolve the issue.

ATTORNEY-CLIENT RELATIONSHIP

In these transactions, the City will be our client and an attorney-client relationship will exist between the City and the firm. In performing our services as bond counsel, we will represent the interests of the City exclusively. However, our representation of the City will not affect our responsibility to render an objective bond opinion.

Upon the closing of the Bond transaction, without notice, it will be presumed that our services on that transaction shall be complete, and the firm will not be actively providing any services under this engagement letter, until requested again by the City or its counsel.

GENERAL MATTERS

We propose that our fees as bond counsel be fixed on an issue-by-issue basis, after negotiation with City staff. Except in extraordinary circumstances and subject to agreement of the parties, payment of our bond counsel fee in connection with the proposed Bonds of the City would be contingent upon the successful closing of the Bonds, but in any event we would still expect reimbursement for our out-of-pocket expenses if the issue does not close. For our services as bond counsel in connection with the Refunding Water and Sewer Revenue Note, Series 2016, of the City, we propose that our contingent fee be \$20,000, which will include our expected out-of-pocket expenses.

Finally, if City staff desires that we review or prepare any other documents and/or perform substantial research in connection with a financing plan or other special project (for example, Bond referenda), or provide other post-issuance services (including, but not limited to, interest rate mode changes, changes in other bond professionals or services in connection with state or federal regulatory or investigative proceedings), that do not

result in the issuance of Bonds, we propose that our fee be based upon the current hourly rates of those attorneys performing work on the matter, plus our out-of-pocket expenses, or be a fixed amount approved by you.

This proposal and resulting agreement, if accepted by the City, may be terminated by the City or our firm upon 30 days written notice by the applicable party.

If this proposal is acceptable to the City, please execute it in the space below.

This proposal may be executed in several counterparts, and each counterpart shall for all purposes be deemed an original; and all such counterparts shall constitute one and the same instrument.

Yours very truly,

Bryant Miller Olive P.A.

Accepted _____, 2016, by the City.

Nathan Whitt, Mayor
City of Dunnellon, Florida

From: [David Orshan](#)
To: [Jan Smith](#)
Cc: [Dawn Bowne](#)
Subject: Re: Outstanding amounts owed reconciliation
Date: Wednesday, July 13, 2016 4:44:17 PM

Jan,

Here are my thoughts. I believe and hope you and the city should like this resolution.

1. Florida Fiber Networks owns the A/R as part of our asset purchase of Florida Cable, Inc. which you have previously been given the amounts through June that currently total \$53,087.11 through July 2016. This is based upon open balances as follows through July 2016

City Hall \$17,475.10
Fire \$ 6,575.60
Police \$14,145.48
Public Service \$10,656.02
Waste Water \$ 4,234.91
Total \$53,087.11

The current rate of charges for the city is now limited to **\$59.99 per account for 5 broadband accounts totaling \$299.95 per month** ongoing. There is no phone bill charges going forward.

2. The calculation for rent at \$7,824.00 is not accurate. The last correspondence from the City on April 21, 2016 indicated a rent rate of \$503.44 per month to Florida Fiber Networks.

The rental cost for 2015 Sept through December at a rate of \$511.10 per month is \$2,044.40.

The rent due in 2016 from January through July at the \$503.44 per month is \$3,524.08 for a total rent due of \$ **\$5,568.48**.

4. The building related expenses for the 10 months at \$5,920.90 are good.

5. The Duke Energy deposits charges of \$3,953.64 are also good.

Therefore, the amount FFN owes the City of Dunnellon is as follows:

BRE \$5,920.00
RENT \$ 5,568.48 including taxes.
DUKE \$ 3,953.64
Total \$ 15,442.12

The difference is The City of Dunnellon owes Florida Fiber Networks is **\$37,644.99**.

Solution:

FFN and The City of Dunnellon agree to the following :

1. The City of Dunnellon assigns the current Lease Agreement for the property to Florida Fiber Networks.

2. FFN does not make any rent payments for a 3 year period. The rent current payment amount of \$503.44. The amount of rent being credited is \$20,832.24. This is based upon the following calculations and assumes the highest 6% cost increase available to the contract:

2016- rental monthly fee at a rate of \$503.44 X 5 months = \$2,517.20

2017 rental monthly fee at a rate of \$533.64 X 12 months = \$6,403.68

2018 rental monthly fee at a rate of \$599.61 X 12 months = \$7,195.32

2019 rental monthly fee at a rate of \$673.72 X 7 months = \$4,716.04

Total Credit for rent \$20,832.24

Florida Fiber Networks writes off the remaining \$16,812.75 as good will toward the city. Following the 36 months, the rent will be paid monthly by Florida Fiber Networks to the City of Dunnellon at the actual calculated rate at that time according to the Agreement.

This scenario allows for an amicable resolution and does not require the city to make any major adjustments to their operations and no out of pocket cash payments. I sincerely hope this response finds its way to a resolution so we can proceed forward together.

Warmest Regards,

David Orshan
Chief Operating Officer
Florida Fiber Networks
301 South Collins Street Suite 105
Plant City, Florida 33563
dorshan@flfibernet.com
M: 305-216-3200

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On Jul 13, 2016, at 1:41 PM, Jan Smith <jsmith@dunnellon.org> wrote:

David,

Thank you very much for your prompt reply to the City's letter regarding the outstanding accounts reconciliation, and our offer to settle them in good faith so that we can move forward with other

partnership opportunities.

City Council made it very clear that until the outstanding payables are resolved, they will not discuss any future lease agreement, or any other partnership ideas. They feel strongly that approaching this in any other manner would be putting the cart before the horse so to speak. And, since there is no existing lease agreement, I would strongly recommend that we handle these matters one at a time as suggested.

Please let me know how you would like to proceed, and I'll share this information with Council.

Regards,

Jan Smith
Finance Officer
City of Dunnellon
20750 River Drive
Dunnellon, FL 34431
Phone: 352-465-8500
Fax: 352-465-8505
Email: jsmith@dunnellon.org

Please Note: Florida has a very broad public records law. Written communication to or from City officials regarding City business is public record and open to inspection including names, addresses, and email addresses. Therefore, your email communication may be subject to public disclosure.

From: David Orshan [<mailto:dorshan@flfibernet.com>]

Sent: Tuesday, July 12, 2016 3:57 PM

To: Jan Smith

Cc: Lynn Wyland; Loretta Barton; Mandy Roberts

Subject: Re: Outstanding amounts owed reconciliation

Importance: High

Jan,

Thank you for your counter offer. The need for a long term solution is required to support the business. We can work through the rest of your counter proposal but do require an agreement that allows us to maintain our presence at that location for many years to come. Perhaps a 7 year initial term with a 5 year renewal. Lets get this issue addressed and the rest we can amicably work out.

Thank you,

David Orshan
Chief Operating Officer
Florida Fiber Networks
301 South Collins Street Suite 105
Plant City, Florida 33563
dorshan@flfibernet.com
M: 305-216-3200

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On Jul 12, 2016, at 2:12 PM, Jan Smith <jsmith@dunnellon.org> wrote:

Hello David,

Please see the attached letter and reconciliation for your consideration.

Regards,

Jan Smith
Finance Officer
City of Dunnellon
20750 River Drive
Dunnellon, FL 34431
Phone: 352-465-8500
Fax: 352-465-8505
Email: jsmith@dunnellon.org

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CITY OF DUNNELTON

20750 River Drive
Dunnellon, FL 34431
(352) 465-8500
FAX (352) 465-8505

July 12, 2016

VIA E-MAIL: dorshan@flfibernet.com

Mr. David Orshan
Florida Fiber Networks, LLC
2295 South Hiawasse Road
Suite 407
Orlando, Florida 32835

Dear David:

The City is confident that it can reconcile its relationship with Florida Fiber and looks forward to a congenial, collaborative relationship with Florida Fiber in the years to come. At the workshop, Council reviewed and discussed FFN's reconciliation proposal. We offer the following counter proposal for your review as indicated on the attached spreadsheet.

Regarding rent for the premises, once FFN came into possession in September, 2015, it did so without the City Council's approval of an assignment of the lease, pursuant to the lease's terms. Therefore, it has been in possession of the premises without a lease. The City wants the base rent to be commensurate with comparable leases in the surrounding area per square foot, which is \$.80/sq. ft. With the rental area of the premises being 978 square feet (which includes a bathroom), the base rent would therefore be \$782.40 for ten months, plus tax. This rental amount would be retroactive back to September 1 2015, when FFN came into possession. Therefore, FFN would owe back rent for ten (10) months, September 1, 2015 through June 30, 2016 in the amount of **\$7,824.00** plus tax. Going forward, beginning July 1, 2016, the City Council does not want to enter into a long-term lease agreement at this time but will agree to a month-to-month lease.

Regarding internet and phone service, as you are now aware, the City has not had phone service through Florida Cable or FFN since between March and May, 2015. In a spirit of cooperation, though, we will agree to reimburse FFN for both internet and phone service for the ten months (September 1, 2015 through June, 2016) that you have owned the System in Dunnellon. By our calculations, the amount for internet and phone service is \$1,759.57 per month for a total amount of **\$17,595.72**. EFFECTIVE JULY 1, 2016, PLEASE ADJUST ALL

INVOICES TO REFLECT THAT THE CITY NO LONGER HAS PHONE SERVICE WITH FFN.

Given the above, it is the City's position that the City owes FFN for internet and phone service the amount of **\$17,595.72**. FFN owes the City for rent (\$7,824.00), building-related expenses (\$5,920.90), and Duke Energy deposit charges (\$3,953.64) in the amount of **\$17,698.54**. If you are in agreement with our proposal we will forgo the amount of \$102.82 (the difference between the amount FFN owes the City and the amount the City owes FFN). Until this matter is resolved the City cannot move forward with creating a new lease.

If you agree to the City's counterproposal as expressed in this letter, please have an officer of FFN sign below, and we will move forward with preparing mutual releases.

I look forward to hearing from no later than July 19, 2016. We also look forward to a new day with FFN.

Sincerely,

Jan Smith
Finance Officer

Florida Fiber Networks, LLC

Print name & title