

**TO:** Board of Commissioners

**FROM:** Administrator/Controller's Office

**DATE:** February 7, 2018

**RE:** Dickinson Wright PLLC Bond Counsel Engagement Letter for Isabella County Road Commission Facilities Project

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**BACKGROUND**

The Isabella County Road Commission (ICRC) recently completed a building feasibility study of its operations located at 2261 East Remus Road, Mount Pleasant, Michigan. The study revealed findings that indicate the facility is no longer suitable to house the ICRC operations and recommended construction of a new 66,000 square foot facility at a cost of \$10 million. Financing options available to the ICRC are limited in duration to ten years. The need for a longer financing term has lead the ICRC to request the issuance of General Obligation Bonds by the County with a pledge of its limited tax full faith and credit to finance these capital improvements. Michigan Transportation Fund revenues collected by the ICRC would be utilized as a first budgetary obligation for the payment of principal and interest of the issuance.

At its Regular Meeting of January 16, 2018, the Isabella County Board of Commissioners formally accepted the proposal from the ICRC and directed the ICRC to provide information regarding the not to exceed borrowing amount of \$10 million for a Limited Tax General Obligation (LTGO) Bond, Full Faith and Credit Pledge prior to final consideration by the County. The Board of Commissioners further noted that it would consider adoption of a Notice of Intent in conjunction with such LTGO issuance, being the necessary first step in the bond process and publication of which starts the 45-day referendum period.

In order for the County to proceed with the bond procurement process, it must assemble a team of professionals including a Financial Advisor and a Bond Attorney. The Financial Advisor and Bond Attorney work in concert, but very independently, as there exists a legal distinction between the services they are allowed to perform. The Bond Attorney, or Bond Counsel,

provides legal advice pertaining to the authorizing, issuing and delivering of the bonds and will review the project and the bond transaction for compliance with the Internal Revenue Code and the laws of the State of Michigan to ensure it is an enforceable contract and qualifies for tax exempt interest where applicable. Further, Bond Counsel prepares the necessary Board resolutions, notices, official statements, and closing transcripts for the bonds. While the Bond Counsel will work with and for the County throughout the bond issuance, payment for services will not be borne by the County, but will be paid for from the bond proceeds and ultimately by the ICRC. The fees for Bond Counsel legal services are set forth in the attached engagement letter as an amount not exceeding \$37,500, plus expenses not expected to exceed \$400.

### **ALTERNATIVES**

The County could choose not to approve the attached Dickinson Wright PLLC Bond Counsel Engagement Letter and seek to engage legal services from another firm in the issuance of LTGO Bonds for the ICRC Facilities Project.

The County could choose not to proceed in approval of any Bond Counsel but such action would halt the bond procurement process and serve to deny the ICRC request for a County pledge of its limited tax full faith and credit to finance the capital improvements.

### **FINANCIAL IMPACT**

Approval of the attached would not commit the County to any liability for payment of the Bond Counsel services, as payment for these services will be paid for from the bond proceeds and ultimately by the ICRC as a cost of issuance for the ICRC Facilities Project bond. The fees for Bond Counsel legal services are set forth in the attached engagement letter as an amount not exceeding \$37,500, plus expenses not expected to exceed \$400.

### **OTHER CONSIDERATIONS**

Attorney Paul M. Wyzgoski of Dickinson Wright PLLC has been the contact with the County to this point on this bond issuance and will serve as the attorney primarily responsible for managing the financing for the County. Attorney Wyzgoski has previously worked as Bond Counsel for

Isabella County on a \$3,500,000 building authority bond in 2007, a \$4,620,000 building authority refunding bond in 2008, and a \$5,090,000 County refunding bond in 2012.

The next step in furthering the bond procurement process for the ICRC Facilities Project is for the Board of Commissioners to adopt a resolution which authorizes the publishing of a Notice of Intent to issue bonds. Such Notice of Intent must be prepared by Bond Counsel, and the County would need to engage in such legal services to proceed.

### **RECOMMENDATIONS**

Consider approving the attached Dickinson Wright PLLC Bond Counsel Engagement Letter, Dated February 2, 2018, to engage legal services in the issuance of LTGO Bonds for the ICRC Facilities Project.

### **ATTACHMENTS**

- Dickinson Wright PLLC Bond Counsel Engagement Letter, Dated February 2, 2018

February 2, 2018

Via Email

Board of Commissioners of the County of Isabella  
Mt. Pleasant, Michigan

Dear Board Members:

The purpose of this letter is to set forth certain matters concerning the services we will perform as bond counsel to the County of Isabella (the "Issuer") in connection with the issuance of bonds in an amount presently estimated not to exceed \$10,000,000 (the "Bonds") by the Issuer to finance capital improvements for Isabella County Road Commission facilities (the "Project"). We understand that the Bonds will be issued pursuant to Act 34, Public Acts of Michigan, 2001, as amended, and the Issuer will pledge its limited tax full faith and credit for payment of the principal of and interest on the Bonds, although it is expected that Michigan Transportation Fund revenues will be utilized in the first instance for such purpose. We further understand that the Bonds will be sold pursuant to a private placement or public sale as recommended to the Issuer by the Issuer's financial advisor.

### SCOPE OF ENGAGEMENT

In our capacity as bond counsel, we expect to perform the following services:

- (1) Meet with representatives of the Issuer and the Issuer's consultants with respect to the proposed financing.
- (2) Provide legal advice as to the best method for authorizing, issuing and delivering the Bonds.
- (3) Analyze the Project and the Bonds for compliance with the requirements of the Internal Revenue Code and applicable Michigan law.
- (4) Prepare and review documents necessary or appropriate to the authorization, issuance and delivery of the Bonds (including without limitation the resolutions of the governing body of the Issuer declaring official intent to reimburse Project expenditures from Bond proceeds, directing publication of the applicable notice of intent to issue the Bonds and authorizing the issuance of the Bonds; the order of the authorized officer of the Issuer approving

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the sale of the Bonds; and all necessary closing documents), and coordinating the authorization and execution of such documents.

(5) Assist the Issuer in seeking from other governmental authorities (including without limitation the Michigan Department of Treasury) such approvals, permissions and exemptions as we determine are necessary or appropriate in connection with the authorization, issuance and delivery of the Bonds, except that we will not be responsible for any blue sky filings.

(6) Attend such meetings, conferences and bond closing as may be required.

(7) Prepare and/or review those portions of any official statement or other disclosure document with respect to the Bonds that describe the legal aspects of the Bonds.

(8) Prepare a notice of sale in connection with a competitive sale of the Bonds or review any request for proposals for a negotiated sale and any bond purchase agreement with the purchaser.

(9) Prepare the continuing disclosure undertaking of the Issuer, if required.

(10) Subject to the completion of proceedings to our satisfaction, deliver our legal opinion (the "Bond Opinion") regarding the validity and binding effect of the Bonds, the source of payment and security for the Bonds, and the excludability of the interest on the Bonds from gross income for federal and Michigan income tax purposes. Our Bond Opinion will be addressed to the Issuer and will be delivered by us on the date that the Bonds are exchanged for their purchase price (the "Closing").

(11) Prepare the closing transcripts for the Bonds.

Our Bond Opinion will be based on facts and law existing as of its date. In rendering our Bond 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, and we will assume continuing compliance by the Issuer with applicable laws relating to the Bonds. During the course of this engagement, we will rely on you to provide us with complete and timely information on all developments pertaining to any aspect of the Bonds and their security. We understand that you will direct Issuer officials and employees of the Issuer to cooperate with us in this regard.

Our duties in this engagement are limited to those legal services expressly set forth above, which are services traditionally provided by bond counsel. As attorneys, we do not represent ourselves as financial advisors or experts and do not provide advice which is primarily financial in nature, such as advice concerning the financial feasibility of the financing, recommending a particular structure for the Bonds as being financially advantageous, advice estimating or comparing the relative cost to maturity of the Bonds depending on various interest

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rate assumptions, or advice regarding the financial aspects of pursuing a competitive sale versus a negotiated sale.

Specifically, among other things, our duties do not include: (a) handling litigation that may arise with respect to the Bonds; (b) preparing or reviewing property tax levy proceedings; (c) property acquisition and condemnation; (d) services relating to any grant funds related to the financing or to any contracts or agreements related thereto; (e) preparing requests for tax rulings from the Internal Revenue Service or no action letters from the Securities and Exchange Commission; (f) preparing blue sky or investment surveys with respect to the Bonds; (g) making an investigation or expressing any view as to the creditworthiness of the Issuer or the Bonds; (h) except as described in paragraph (7) above, assisting in the preparation or review of any disclosure document with respect to the Bonds, or performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document or rendering advice that such document does not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; (i) after the Closing, providing continuing advice to the Issuer or any other party concerning any actions necessary to assure that the interest paid on the Bonds will continue to be excludable from gross income for federal income tax purposes (e.g. our engagement does not include rebate calculations for the Bonds); and (j) addressing any other matter not specifically set forth above that is not required to render our Bond Opinion.

#### ATTORNEY-CLIENT RELATIONSHIP

Upon execution of this engagement letter, the Issuer will be our client and an attorney-client relationship will exist between us. We assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. We further assume that all other parties understand that in this transaction we represent only the Issuer, we are not counsel to any other party, and we are not acting as an intermediary among the parties. Our services as bond counsel are limited to those contracted for in this letter; the Issuer's execution of this engagement letter will constitute an acknowledgment of those limitations. Our representation of the Issuer will not affect, however, our responsibility to render an objective Bond Opinion.

Eric McGlothlin and I will be the attorneys primarily responsible for managing the financing, and will be assisted by Diana Murphy, a legal assistant in our Firm. In addition, Peter Kulick will provide expertise regarding federal tax aspects of the Bonds. Mr. McGlothlin, Ms. Murphy and I are resident in our Troy office and Mr. Kulick is resident in our Lansing office. Mr. McGlothlin or I will attend any meetings at which our Firm's attendance is requested. Our resumes and other information about our Firm can be found on our website – [www.dickinsonwright.com](http://www.dickinsonwright.com). Please let me know if you would like any additional information.

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## CONFLICTS

Although the identity of the initial purchaser of the Bonds is unknown at this time, our Firm may currently and from time to time serve as counsel to such purchaser on matters unrelated to the transactions described in this letter. We do not believe that any such representation of such purchaser as described in this paragraph will adversely affect our representation of, or our relationship with, you.

## FEES

We propose that our fee for performing the services set forth above shall be payable upon delivery of the Bonds and shall be in an amount not exceeding \$37,500, plus our out-of-pocket disbursements for expenses incurred in performing the foregoing services, which we would not expect to exceed \$400. Our fee for services is based upon the facts and expectations set forth above, and we reserve the right to modify our fee if such facts or expectations significantly change or if the financing experiences any significant delays.

If, for any reason, the financing represented by the Bonds is not consummated or is completed without delivery of our Bond Opinion as bond counsel, or our services are otherwise terminated, we will expect to be compensated at our public sector rates, which rates are less than our standard hourly rates, for time actually spent on your behalf, plus client charges, as described above.

In addition, if the Issuer requests us to perform additional services beyond those set forth in paragraphs (1) to (11) above, we propose that such work be charged at hourly rates to be agreed upon by the Issuer and the Firm.

Our representation of the Issuer and the attorney-client relationship created by this engagement letter will be concluded upon delivery of the Bonds. Nevertheless, subsequent to the Closing, we will mail the Internal Revenue Service Form 8038-G, make the required filing with the Michigan Department of Treasury, and prepare and distribute to the participants in the transaction a transcript of the proceedings pertaining to the Bonds.

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DICKINSON WRIGHT PLLC

If our employment on this basis is agreeable to you, please so indicate by returning the enclosed copy of this engagement letter dated and signed by an authorized officer, retaining the original for your files. We look forward to working with you.

Very truly yours,

DICKINSON WRIGHT PLLC

By: Paul M. Wysocki

Accepted: \_\_\_\_\_, 2018

COUNTY OF ISABELLA

By: \_\_\_\_\_

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