

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT:

AGENDA DATE: April 24, 2007

CONTACT PERSON/PHONE: William F. Studer Jr., Deputy City Manager Financial Services

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

AUTHORIZE THE CITY MANAGER TO SIGN THE ATTACHED PLACEMENT AGENT AGREEMENT WITH FIRST SOUTHWEST COMPANY WITH RESPECT TO THE 2007 THUNDER CANYON PID BONDS ONLY. THE TOTAL DOLLAR AMOUNT WHICH FIRST SOUTHWEST IS RECEIVING IN SUCH BOND TRANSACTION IS ONE DOLLAR (\$1.00).

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

FIRST SOUTHWEST COMPANY IS THE CITY'S FINANCIAL ADVISOR. THEY HAVE VOLUNTERED TO ASSIST THE CITY FIND A BUYER FOR THE PUBLIC IMPROVEMENT DISTRICT NO. 1 REVENUE BONDS (TUNHDER CANYON). THEY ARE NOT CHARGING FA OR PLACEMENT AGENT FEES FOR THIS SERVICE BUT BECAUSE OF MSRB REGULATORY RULES THAT GOVERN FSC'S BUSINESS, THEY NEED TO ENTER INTO A SEPARATE PLACEMENT AGENT AGREEMENT FOR THIS TRANSACTION. THE AGREEMENT IS ATTACHED. THIS ITEM AUTHORIZES THE CITY MANAGER TO SIGN SUCH A PLACEMENT AGENT AGREEMENT.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? NO

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

ONE DOLLAR (\$1.00) PAYABLE FROM BOND PROCEEDS OF THE 2007 PID REVENUE BONDS

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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07 APR 20 AM 10:51

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:

Wong

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PLACEMENT AGENT AGREEMENT

This Placement Agent Agreement ("Agreement") is made and entered into by and between the City of El Paso, Texas ("Issuer") and First Southwest Company ("FSC").

WITNESSETH:

WHEREAS, the Issuer and FSC entered into a Financial Advisory Services Agreement (the "FA Agreement") dated as of August 29, 2006, which is currently in effect; and

WHEREAS, the Issuer presently intends to issue indebtedness in the approximate amount of \$425,000 El Paso Public Improvement District No. 1 Special Assessment Revenue Bonds, Series 2007 (the "Series 2007 Bonds") and, in connection with the authorization, sale, issuance and delivery of such indebtedness, the Issuer desires to obtain the professional services of FSC to serve as the placement agent for the Series 2007 Bonds; and

WHEREAS, FSC is willing to provide its professional services and its facilities as placement agent in connection with the issuance of the Series 2007 Bonds; and

WHEREAS, Rule G-23(d) of the rules of the Municipal Securities Rulemaking Board (the "MSRB Rules") provides that no municipal securities dealer ("Dealer") having a financial advisory relationship with respect to an issue of municipal securities shall act as a placement agent for an issue sold on a negotiated basis, unless the following conditions are satisfied:

- 1) the financial advisory relationship with respect to such issue has been terminated in writing and the issuer has consented to writing to the Dealer's participation in the placement of the securities;
- 2) the Dealer has disclosed in writing at such termination that there may be a conflict of interest in changing from the capacity of financial advisor to placement agent and the issuer acknowledges the receipt of such disclosure in writing; and
- 3) the Dealer has expressly disclosed in writing, at or before such termination, the source and anticipated amount of all remuneration to the Dealer with respect to such issue and the issuer has expressly acknowledged in writing the receipt of such disclosure.

NOW, THEREFORE, the Issuer and FSC, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, do hereby agree as follows:

07 APR 20 AM 10:51
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**SECTION I
FINANCIAL ADVISORY RELATIONSHIP TERMINATION**

A. Termination. The financial advisory relationship between the Issuer and FSC with respect to the Series 2007 Bonds is hereby terminated. The FA Agreement shall remain in effect and is still applicable to any and all indebtedness, other than the Series 2007 Bonds, issued by the Issuer. Any notice requirements necessary for such termination are hereby waived by both the Issuer and FSC.

B. Conflict of Interest. The MSRB Rules provide that there may be a conflict of interest in changing from the capacity of financial advisor to placement agent and that FSC is required to disclose such possibility to the Issuer. By providing this Agreement to the Issuer, FSC is disclosing to the Issuer this potential conflict of interest. By entering into this Agreement, the Issuer acknowledges the receipt of such disclosure and agrees that, notwithstanding such potential conflict of interest, it is in the best interest of the Issuer to retain FSC as placement agent for the Series 2007 Bonds as provided herein.

**SECTION II
DESCRIPTION OF SERVICES**

Upon the request of an authorized representative of the Issuer, FSC agrees to provide its professional services and its facilities as placement agent in connection with the issuance of the Series 2007 Bonds; and for having rendered such services, the Issuer agrees to pay to FSC the compensation as provided in Section IV hereof.

**SECTION III
TERM OF AGREEMENT**

This Agreement shall become effective as of the date executed by the Issuer as set forth on the signature page hereof and, shall remain in effect thereafter until the Issuer has paid FSC in full the fee and all reimbursable expenses.

**SECTION IV
COMPENSATION AND EXPENSE REIMBURSEMENT**

The fees due to FSC for the services set forth and described in Section II of this Agreement with respect to the issuance of the Series 2007 Bonds during the term of this Agreement shall be calculated in accordance with the schedule set forth on Appendix A attached hereto. Unless specifically provided otherwise on Appendix A or in a separate written agreement between Issuer and FSC, such fees, together with any other fees as may have been mutually agreed upon and all expenses for which FSC is entitled to reimbursement, shall become due and payable concurrently with the delivery of the proceeds of the Series 2007 Bonds to the Issuer. By entering into this Agreement, the Issuer acknowledges the disclosure by FSC of its total anticipated remuneration with respect to the Series 2007 Bonds. FSC has not received nor will it collect any compensation or other consideration from the buyer(s).

07 APR 20 AM 10:51
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**SECTION V
MISCELLANEOUS**

1. Choice of Law. This Agreement shall be construed and given effect in accordance with the laws of the State of Texas.

2. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Issuer and FSC, their respective successors and assigns; provided however, neither party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.

3. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this Agreement shall be of no force or effect except for a subsequent modification in writing signed by the parties hereto.

FIRST SOUTHWEST COMPANY

By: Hill A. Feinberg
Hill A. Feinberg
Chairman and Chief Executive Officer

By: Steven Adams
Steven Adams
Senior Vice President

CITY OF EL PASO, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Secretary

07 APR 20 AM 10:51
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APPENDIX A

The fees, including expenses, due FSC will not exceed those contained in the fee schedule as listed below:

\$1.00

Based upon the current proposal to issue a total of \$425,000 of the Series 2007 Bonds, the total amount of remuneration to FSC is anticipated to be \$1.00.

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