

PROPOSED BY: Staff

BILL NO. 21-2919

INTRODUCED BY: Alderman Kleinschmidt

ORDINANCE NO. 2904

AN ORDINANCE APPOINTING GILMORE & BELL AS SPECIAL TAX AND DISCLOSURE COUNSEL AND AUTHORIZING AN AGREEMENT ENGAGING GILMORE & BELL FOR THE ISSUANCE OF CERTIFICATES OF PARTICIPATION

WHEREAS, the City of Des Peres is considering issuance of *Certificates of Participation Bonds* (hereinafter referred to as "COPS Bonds") in an amount to be determined at a later date for financing of certain capital projects including potential purchase and improvement of certain real estate for park purposes and renovations to a portion of the Des Peres Government Center; and

WHEREAS, the services of Bond Counsel are necessary to allow the city to proceed with consideration of issuance of COPS Bonds, whether by private or negotiated placement, including preparation of the Preliminary Official Statement; for preparation of all legal documents; and to review all proceedings necessary to issue an Opinion Letter prior to issuance of said COPS Bonds as to their tax treatment under federal and state law; and

WHEREAS, the City solicited and advertised for proposals from qualified Bond Counsel for the issuance of approximately \$5,000,000 of COPS Bonds until 12:00 P.M. on Wednesday, July 7, 2021 with the following results:

	Gilmore & Bell	Thompson Coburn	Armstrong Teasdale	Kutak Rock
Location	St Louis	St Louis	St Louis	Kansas City
Lead Counsel	Jason Terry	Ali Rafferty	Robert Klahr	Jacob Lowry
Private Placement	\$ 18,000	\$20,000	\$ 25,000	\$ 27,500
Public Sale	\$ 25,000	\$ 28,000	\$ 40,000	\$ 35,000
Other Expenses	None	None	None	\$2,500 Travel

WHEREAS, the City of Des Peres has previously used Gilmore & Bell as Bond Counsel for the 1989 Public Safety General Obligation Bonds, the 2000 General Obligation Bonds for The Lodge; the 2002 COPS Bonds for The Lodge Outdoor Pool; the 2002 Tax Increment Financing Bonds for Redevelopment of West County Center and the City has been well pleased with the quality and timeliness of the work provided by Gilmore & Bell PC;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DES PERES, MISSOURI, AS FOLLOWS:

SECTION ONE: Gilmore and Bell is hereby retained as Special Tax and Disclosure Counsel for the City of Des Peres relating to the potential issuance of *Certificates of Participation (COPS) Bonds* in accordance with the proposal submitted by Gilmore & Bell dated July 7, 2021.

SECTION TWO: The City Administrator is hereby authorized and directed to execute on behalf of the City of Des Peres a *Letter of Agreement* with Gilmore & Bell for Special Tax and Disclosure Counsel Services in a form approved by the City Attor

SECTION THREE: All costs and expenses relating to the services of Gilmore & Bell including any costs of issuance of COPS Bonds shall be paid from the proceeds of the sale of the COPS Bonds. No fees authorized in the *Letter of Agreement* shall be payable unless the COPS Bonds are actually issued.

SECTION FOUR: This Ordinance shall be in full force and effect both from and after its passage and approval by the Mayor and Board of Aldermen

Voting in Favor: Barrett, Concagh, Fitzpatrick, Kleinschmidt, Pound and Osherow

Voting Against:

Absent:

This ordinance passed this 12th day of July, 2021



Mark Becker, Mayor

ATTEST:



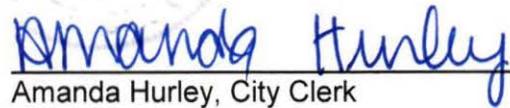
Amanda Hurley, City Clerk

This ordinance approved this 12th day of July, 2021



Mark Becker, Mayor

ATTEST:



Amanda Hurley, City Clerk

1st Reading 7-12-2021
2nd Reading 7-12-2021



**City of Des Peres
Missouri**

June 23, 2021

**RE: City of Des Peres, Missouri
Request for Proposals for Special Tax Counsel
Approximately \$5 million Certificates of Participation (new money)**

To Whom It May Concern:

The City of Des Peres, Missouri (the "City") is requesting proposals from law firms interested in serving as Special Tax Counsel for the City's contemplated Certificates of Participation that will finance park improvements including land acquisition.

Reagan Holliday of HilltopSecurities, St. Louis, Missouri is serving as the City's Municipal Advisor and will assist the City with determining the finance terms, structure and financing timeline. The responsibilities of Special Tax Counsel will generally include the following tasks:

- Coordinating the due diligence process and drafting the official statement, if Certificates are sold via public sale.
- Drafting all necessary ordinances and documents for the authorization and sale of the Certificates consistent with the terms established by the City, including Notice of Sale, if applicable.
- Drafting the Certificate Purchase Agreement (if needed) and Continuing Disclosure Certificate.
- Coordinating and obtaining all necessary title work related to the requisite Leasehold Owner's Title Policy.
- Preparing transcripts and closing documents for the sale of the Certificates.
- Rendering an opinion on the validity and tax-exempt status of the Certificates and rendering a 10b-5 opinion addressed to the City and the Underwriter, if applicable
- Attending the meetings at which the documents are approved by the City and such other meetings as reasonably requested by the City.
- Provide tax law guidance, prepare federal tax certificate and assist the City with final written allocation and provide form of annual compliance checklist.

June 23, 2021

Page 2

- Providing other services which your firm customarily provides, if any, in addition to those set forth above.

Proposals should not exceed 8 pages and must include the following information:

1. Qualifications.

- a) Describe the general capabilities of your firm and partners and others who will be participating in these transactions.
- b) Provide resumes of key partner(s) and other attorney(s) who will be assigned to work with the City, including any tax law and securities law specialists.
- c) Identify the attorney(s) who will primarily perform the City's bond work and the location of the office from which this attorney(s) usually works.
- d) Describe your firm's ability to ensure that a qualified bond attorney(s) is always available to meet the City's needs, including times when the primary attorney(s) is unavailable.
- e) Describe your firm's tax law capability

2. Services. Include a statement confirming that your firm will provide the services outlined above and identify any other services that are included with your engagement as Special Tax Counsel. Additionally, advise whether your firm offers post-issuance compliance services and engagements before the IRS and SEC, if ever required.

3. Conflicts of Interest. Advise whether the firm has any past or current client relationships that could give rise to a conflict of interest that might disqualify the firm from serving as Special Tax Counsel and Disclosure Counsel (if needed).

4. Fees. Provide a statement regarding your fees and any out-of-pocket expenses to be reimbursed by the City. For the fee quotes, please provide 1) a fee quote assuming that the City's transaction will be a private placement, and 2) a fee quote that assumes the City's transaction will involve a public sale (negotiated or competitive) and that you will also provide Disclosure Counsel services. Additionally, please describe any fees the City will incur if the transaction is delayed or terminated.

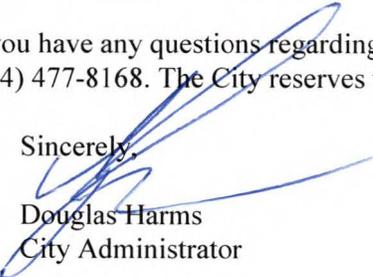
Please submit your written proposal via email no later than noon on July 7, 2021 to the following parties:

Reagan Holliday
Hilltop Securities Inc.
reagan.holliday@hilltopsecurities.com

Tracy Hansen
City of Des Peres
thansen@desperesmo.org

If you have any questions regarding this request for proposals, please call or email Reagan Holliday at (314) 477-8168. The City reserves the right to reject any or all proposals.

Sincerely,


Douglas Harms
City Administrator

cc: Reagan Holliday



PROPOSAL FOR
SPECIAL TAX AND DISCLOSURE COUNSEL SERVICES
FOR THE
CITY OF DES PERES, MISSOURI

Approximately \$5,000,000
Certificates of Participation

Submitted July 7, 2021



One Metropolitan Square
211 N. Broadway, Suite 2000
St. Louis, Missouri 63102-2746

(314) 436-1000 / (314) 436-1166 FAX / gilmorebell.com

July 7, 2021

VIA EMAIL

Ms. Tracy Hansen
Director of Finance
City of Des Peres
12325 Manchester Road
Des Peres, Missouri 63131

Re: Proposal for Special Tax Counsel and Disclosure Counsel Services – Approximately \$5,000,000 Certificates of Participation

Dear Tracy:

We appreciate the opportunity to have worked with the City previously and are pleased to submit this proposal to serve as Special Tax Counsel and, if necessary, Disclosure Counsel in connection with the City's proposed delivery of approximately \$5,000,000 Certificates of Participation (the "*Certificates*"). We believe that Gilmore & Bell, due to its full-time tax and securities lawyers and general municipal bond expertise, has the unmatched ability to assist the City on the Certificate financing for park improvements.

INFORMATION REGARDING THE FIRM

Brief Description of Gilmore & Bell, P.C.

Gilmore & Bell, P.C. was established in 1979, and today is one of the leading public finance law firms in the United States. Gilmore & Bell primarily represents states, counties, cities, school districts and other governmental and quasi-governmental entities as bond counsel in municipal finance transactions and as special counsel for economic development projects and has one of the largest public finance practices in the nation. For more than 25 years, Gilmore Bell has ranked in the top 10 nationally in the number of bond counsel opinions rendered on municipal bond issues. In 2020, the firm delivered the approving opinion on 540 long-term municipal issues aggregating \$10.59 billion in principal amount and served as bond counsel on more bond issues than any other firm in the United States. In addition, the firm ranked 4th nationally in the number of disclosure counsel issues by providing disclosure counsel services for 158 issuances aggregating \$3.46 billion in principal amount.

The firm has approximately 54 attorneys, with offices located in St. Louis and Kansas City, Missouri, Wichita, Kansas, Edwardsville, Illinois, Omaha, Nebraska, and Salt Lake City, Utah. The firm's attorneys have varied and extensive experience in all aspects of public finance transactions, including drafting legal documents, appearing before public bodies and agencies, and consulting with issuers and investment bankers on a wide array of public law matters.

Assigned Personnel

Jason Terry, a partner in the firm's St. Louis office, will be primarily responsible for working with the City on behalf of Gilmore & Bell. He specializes in the areas of tax-exempt bond financing for state and local governments. He has represented numerous cities, counties and other political subdivisions on a wide range of projects, including general municipal improvements, schools and other public buildings, water and sewer utilities, and park projects.

Mark Grimm, a partner in the firm's St. Louis office, will be available to assist Mr. Terry and attend meetings as needed. He specializes in the areas of tax-exempt bond financing for state and local governments and in tax increment financing and other economic development incentives such as TDDs, CIDs and other economic development programs.

Alan Woolever, a partner in the firm's Kansas City office, will provide tax support to the City, and Rick Wright and Bill Burns, also partners in the Kansas City office, will provide securities law and continuing disclosure support as necessary. Ed Sterling, a partner in the firm's Kansas City office, will provide real estate support to the City. Resumes for all six Gilmore & Bell attorneys who will be available to the City for this transaction are attached as *Exhibit A*.

The expectation is that either Mr. Terry or Mr. Grimm will be available at all times to assist the City. Other attorneys of Gilmore & Bell will be available if necessary to assist the City; specifically, Erick Creach, a partner in the St. Louis office or Stephanie Bogue, an associate in the St. Louis office, will be available to assist the City in the unlikely event Mr. Terry or Mr. Grimm are not available.

Overview/Experience of the Firm

Gilmore & Bell has represented the City as Bond Counsel/Special Tax Counsel on 16 financings dating back to 1993, including general obligation bonds, certificates of participation, community improvement districts, transportation development districts and tax increment revenue bonds. Gilmore & Bell has represented Missouri issuers on 284 certificates of participation financings over the past 10 years aggregating \$2.15 billion principal amount of obligations. As such, we believe that no law firm is better prepared than Gilmore & Bell to provide Special Tax Counsel services to the City for the proposed financing. A comprehensive list of financings will be provided to the City upon request.

Tax Expertise

With increased IRS scrutiny of tax-exempt bond transactions, engaging a bond counsel firm with superior tax expertise is more important than ever before. Gilmore & Bell has more tax lawyers than all other Missouri bond counsel firms combined. Their expertise has allowed us to provide superb, cost-effective advice to facilitate complex transactions at tremendous savings for our clients.

In addition, over the past 10 years, our tax lawyers have represented clients in more than 200 IRS audits and administrative compliance checks. Gilmore & Bell's tax attorneys regularly work with the IRS Tax-Exempt Bond Group, which administers the IRS' audit and voluntary compliance program, and have developed strong working relationships with many of the auditors and supervisors. While the City may never need these services, the practical experience our tax attorneys have gained in handling IRS audit inquiries has been invaluable in helping issuers develop practical strategies to maintain and document compliance with the tax rules.

Gilmore & Bell created a Compliance Services Group to help our clients meet IRS requirements for enhanced post-issuance compliance and documentation. This group assists issuers by drafting written practices and procedures and annual written checklists to ensure that compliance with the IRS requirements is addressed and documented. The group also assists issuers in drafting and documenting a final written allocation of bond proceeds.

Further, the members of our tax department perform the mathematical computations and analyses necessary in connection with municipal finance transactions, such as rebate requirements, cash flow analyses, escrow structuring, yield computations, debt service computations, and other computations necessary to determine compliance with federal arbitrage and other tax law restrictions. These capabilities allow the firm to provide services and opinions to the City that other bond counsel firms cannot directly provide.

Securities Law Expertise

Nearly every attorney in the firm (with the exception of our full-time bond tax attorneys) is routinely engaged in preparing offering documents and interpreting and applying SEC and MSRB rules and regulations. As an additional resource for both our attorneys and clients, three of the firm's attorneys provide guidance with respect to federal and state securities laws and disclosure requirements relating to state and local bonds, including the continuing disclosure requirements under the SEC's Rule 15c2-12. The firm is also actively involved in primary offering disclosure matters and regularly assists a wide range of governmental issuers in developing more current disclosure language.

SCOPE OF SERVICES

Special Tax Counsel and Disclosure Counsel. As Special Tax Counsel to the City, Gilmore & Bell will provide all of the services outlined in the Request for Proposals for Special Tax Counsel dated June 23, 2021. More specifically, our services as Special Tax Counsel involve the following:

- (1) Subject to the completion of proceedings to our satisfaction, render our legal opinion (the "*Bond Opinion*") regarding the validity and binding effect of the Certificates, the excludability of interest on the Certificates from gross income for federal and Missouri income tax purposes, and such related matters as we deem necessary or appropriate.
- (2) Examine applicable law as it relates to the authorization and issuance of the Certificates and our Bond Opinion and advise the City regarding the legal authority for the issuance of the Certificates and other legal matters related to the structure of the Certificates.
- (3) Prepare or review authorizing proceedings and legal documents necessary or appropriate to the authorization, issuance and delivery of the Certificates and coordinate the authorization and execution of such documents, including any documents necessary for a competitive sale of the Certificates.
- (4) Draft or review the continuing disclosure undertaking of the City.
- (5) Assist the City in seeking from other governmental authorities such approvals, permissions, and exemptions as we determine are necessary or appropriate in connection with the authorization, issuance and delivery of the Certificates, except that we will not be responsible for any required Blue Sky filing.

- (6) Assist the City in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance of the Certificates.
- (7) Attend meetings and conferences related to the Certificates and otherwise consult with the parties to the transaction prior to the issuance of the Certificates.
- (8) Coordinate the closing of the transaction, and after the closing assemble and distribute transcripts of the proceedings and documentation relating to the authorization and issuance of the Certificates.
- (9) In our capacity as Disclosure Counsel to the City, we will: (a) assist the City in the preparation of the Preliminary Official Statement and the final Official Statement relating to the Certificates and consult with the City regarding any disclosure issues that may arise in conjunction with the planned issuance of the Certificates, (b) conduct a due diligence review of the City as a basis for the delivery of our SEC 10b-5 letter described below, and assist the City in responding to the due diligence requests of the Underwriter and its counsel, and (c) at closing, deliver to the Underwriter and the City a customary SEC Rule 10b-5 letter relating to the Official Statement.

Our Bond Opinion will be addressed to the City and the Underwriter and will be delivered by us on the date the Certificates are exchanged for their purchase price (the “*Closing*”). The 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 City with applicable laws relating to the Certificates. 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 Certificates and their security. We understand that you will direct members of your staff and other employees of the City to cooperate with us in this regard.

Our duties in this engagement are limited to those expressly set forth above. Among other things, our duties do not include:

- (a) Preparing requests for tax rulings from the Internal Revenue Service or no-action letters from the Securities and Exchange Commission, or representing the City in Internal Revenue Service examinations or inquiries or Securities and Exchange Commission investigations.
- (b) Preparing Blue Sky or investment surveys with respect to the Certificates.
- (c) Drafting state constitutional or legislative amendments or pursuing test cases or other litigation.
- (d) Making an investigation or expressing any view as to the creditworthiness of the City or any credit enhancement provider for the Certificates.
- (e) Preparing or negotiating the terms of any guaranteed investment contract or other investment agreement.

- (f) After Closing, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking.
- (g) After Closing, providing continuing advice to the City or any other party concerning any actions necessary to assure that interest paid on the Certificates will continue to be excludable from gross income for federal income tax purposes (*e.g.*, our engagement does not include rebate calculations for the Certificates).
- (h) Addressing any other matter not specifically set forth above that is not required to render our Bond Opinion.

Post-Issuance Compliance Services. Gilmore & Bell's post-issuance compliance services are designed to help municipal issuers, other borrowers and trustees comply with the federal income tax laws and continuing disclosure requirements after the bonds are issued. Gilmore & Bell has established a separate post-issuance compliance group staffed with legal assistants, financial analysts and administrators. These paraprofessionals, under the direction of Gilmore & Bell's tax and securities lawyers, assist governmental issuers and conduit borrowers in complying with federal securities and income tax requirements after the financing closes.

Gilmore & Bell's compliance services group provides services individually tailored to the client's needs for post-issuance advice on continuing disclosure and federal tax matters. Continuing disclosure advice includes maintenance of a tickler system, assembling materials for filing, preparation of questionnaires and EMMA document filing packages, and advice regarding the timing and content of material event disclosures.

Gilmore & Bell's post-issuance compliance tax practice focuses on: (1) arbitrage rebate and investment compliance, (2) use of proceeds and use of financed assets and (3) recordkeeping and ongoing monitoring. Gilmore & Bell has performed arbitrage rebate computations since 1987 and regularly advises municipal issuers and borrowers on ways they can best comply with arbitrage investment restrictions, arbitrage rebate payment requirements, tax restrictions on the use of bond proceeds and bond-financed facilities, record keeping and retention rules, and other related federal income tax compliance issues. In addition, Gilmore & Bell regularly assists issuers in preparation of final written allocation of bond proceeds, calculation of private use, structuring arrangements in management and service agreements to avoid private business use, complying with the change in use rules in cases where it becomes necessary to sell or dispose of financed property and generally establishing procedures and policies to substantiate ongoing tax compliance.

CONFLICTS OF INTEREST

Gilmore & Bell does not have a litigation practice or general real estate, corporate or municipal practice. This eliminates virtually any possibility of a conflict arising between serving as counsel to the City and serving as plaintiff's or corporate attorney in connection with litigation against, or representation in a potentially adversarial role (such as in condemnation matters) to the City. Gilmore & Bell thus avoids the actual and potential conflict situations that a large firm with a small public finance department may face. As Special Tax and Disclosure Counsel to the City, our allegiance would be owed to the City, and the City would be a client of our firm.

FEES AND EXPENSES

Based upon (1) our current understanding of the terms, structure, size and schedule of the financing, (2) the duties we will undertake pursuant to this letter, (3) the time we anticipate devoting to the financing, and (4) the responsibilities we assume, our fee for serving as Special Tax Counsel to the City will be \$18,000. If the Certificates are sold by public sale, our fee for serving as Special Tax Counsel and Disclosure Counsel to the City will be \$25,000. Our fee is inclusive of out-of-pocket expenses. **Our fee will be payable only at the successful completion of the financing, regardless of whether the financing is delayed. If for any reason the financing is not consummated, we will not be entitled to any fee or reimbursement of any out-of-pocket expenses.**

CONCLUSION

Gilmore & Bell has a depth of resources available to the City that no other Missouri bond counsel firm can provide. We believe that no other law firm is better qualified than Gilmore & Bell to provide the requested special tax and disclosure counsel services to the City. We appreciate the opportunity to submit this proposal. If you have any questions concerning this proposal or any matter relating to our firm, please do not hesitate to contact me.

Very truly yours,

GILMORE & BELL, P.C.



Jason S. Terry, Director

cc: Reagan Holliday

Attorney Biographies

William D. Burns is a shareholder of the firm in the Kansas City office. Mr. Burns represents issuers, underwriters and other parties to public finance transactions, with a focus on health care and higher education financings, and advises clients on securities law and disclosure issues in public finance as a member of the firm's Securities Group. Mr. Burns also manages Gilmore Bell's continuing disclosure service, which assists clients with the preparation and submission of required continuing disclosure filings. He received his B.S. in Political Science and Journalism (cum laude) from Northwest Missouri State University in 2006 and his J.D. (cum laude) from Washington University School of Law in 2009. Mr. Burns is a member of the Missouri Bar Association and the National Association of Bond Lawyers.

Mark D. Grimm is vice chairman of the firm and a shareholder of the firm in the St. Louis office, where he has practiced law since 1988. He specializes in the areas of tax-exempt bond financing for state and local governments and in tax increment financing and other economic development incentives. Mr. Grimm has represented numerous cities, counties and other political subdivisions on a wide range of projects, including general municipal improvements, schools and other public buildings, water and sewer utilities and road projects. He also advises cities and counties on the use of TIFs, TDDs, CIDs and other economic development programs. Mr. Grimm is listed in *The Best Lawyers in America*® 2020 for Public Finance. He is Chair-Elect of the Hawthorn Foundation and is a past President of the Missouri Economic Development Financing Association. He is a member of the Missouri Municipal Attorneys Association, the Missouri Economic Development Council, and numerous other organizations.

Edward E. Sterling is a shareholder of the firm in the Kansas City office. Mr. Sterling has practiced extensively in the field of real estate law, including the areas of real estate finance, sales and exchanges, leasing, construction, zoning and development, economic development, community development and historic preservation. Mr. Sterling received his A.B. degree from Princeton University, where he majored in the Urban Affairs Program of the Woodrow Wilson School of Public and International Affairs. He received his J.D. degree from the New York University School of Law.

Jason S. Terry is a vice president and a shareholder of the firm in the St. Louis office. Mr. Terry has practiced law as a municipal bond attorney since entering the law practice in 2004 with a focus on tax-exempt bond and lease financings for state and local governments. He is licensed to practice law in Missouri and Illinois and is a member of the Missouri Bar Association. Mr. Terry received B.A. degrees in Industrial Relations and Sociology from the University of North Carolina at Chapel Hill in 1999 and his J.D. from Washington University School of Law in 2004.

Alan Woolever is a shareholder tax attorney in the firm's Kansas City office focusing his practice on the tax aspects of public finance transactions, including, post-issuance compliance responsibilities and IRS examinations related to those obligations. Mr. Woolever is a member of the Board of Directors of the Association for Governmental Leasing and Finance and is a member of the Missouri Bar Association and the National Association of Bond Lawyers. He earned a B.S. in Finance (summa cum laude) from Arizona State University, a J.D. (cum laude) and a LL.M. in Taxation from the University of Missouri - Kansas City School of Law. While in law school Mr. Woolever served as an Articles Editor for *The Urban Lawyer Law Review* and was honored as the Arthur Mag Graduate Fellow in Tax Law. Prior to law school, he was a municipal bond trader focusing on secondary market transactions for Edward Jones.

Richard M. Wright, Jr. is a shareholder of the firm in the Kansas City office and is president and chief executive officer of the firm. Mr. Wright joined the firm in 1992 and concentrates in securities law aspects of public finance and primarily acts as bond counsel or underwriter's counsel on health and educational financings. Prior to that, he practiced in the securities law and corporate finance fields for 10 years. Mr. Wright is a member of the Missouri Bar Association, the National Association of Bond Lawyers and the American College of Bond Counsel. He received his B.A. (summa cum laude) from William Jewell College in 1978 and his J.D. (cum laude) from Harvard Law School in 1981.