



The City of Seattle, Washington

Bond Counsel

REQUEST FOR PROPOSALS

RFP ISSUE DATE: August 5, 2016

QUESTIONS DUE: August 16, 2016

PROPOSAL DUE DATE: 5 P.M. LOCAL TIME, August 26, 2016

**PROPOSAL DELIVERY
INSTRUCTIONS**

One electronic copy via email to:

michael.vandyck@seattle.gov

and

kristin.lamson@seattle.gov

Glen M. Lee, Director of Finance

REQUEST FOR PROPOSALS FOR BOND COUNSEL

The City of Seattle, Washington ("City") is seeking one or more firms to provide legal services and opinions in connection with the City's issuance of bonds and other debt instruments by all City departments, including the City's electrical, water, drainage and wastewater, and solid waste utilities ("Bond Counsel"). The initial term of the engagement will be for two years with an option to extend for an additional two years, in the City's sole discretion.

1.0 BACKGROUND

Seattle is the largest city in Washington State. The elected officials of the City include a Mayor, nine City Council members, and a City Attorney. The Director of Finance is responsible for the City's debt management. The City operates four utilities: electric, water, drainage and wastewater, and solid waste.

The City's debt typically consists of general obligation and revenue debt, which are separately rated, including separate ratings for each utility. Each debt issue is reviewed by the City's Debt Management Policy Advisory Committee (DMPAC) and is authorized by ordinance. The Director of Finance is responsible for the sale of all authorized debt issued by the City. Bond Counsel and financial advisor consultants work directly with the Director of Finance and closely coordinate with the City Attorney and departments issuing the debt.

The City's debt management policies designate competitive bid as the City's preferred method of sale, except for issues with complex circumstances.

The City's present unlimited tax general obligation bond ratings are Aaa by Moody's, AAA by Fitch IBCA and AAA by Standard and Poor's. The City's limited tax general obligation bonds ratings are Aa1 by Moody's, AAA by Fitch IBCA, and AAA Standard and Poor's. Ratings on revenue bonds vary, but range from Aa3/AA- to Aa1/AA+.

The City had about 1.0 billion of general obligation bonds and \$3.7 billion of revenue bonds outstanding at the end of 2015. Typically, the City issues general obligation bonds annually and one series of bonds for each of its four utilities every other year (electric, water, drainage and wastewater, and solid waste). Annual limited tax general obligation bonds issues are typically multipurpose with many project allocations. These allocations are usually maintained when bonds are refunded.

2.0 SCOPE OF WORK

The scope of work to be provided by Bond Counsel includes, but is not limited to, the items listed under Section A2 SCOPE OF WORK in the form of Bond Counsel Agreement, attached as "Exhibit A" ("Scope of Work").

3.0 SPECIAL PROJECT WORK

The Director of Finance may request, in writing, that Bond Counsel provide legal services or opinions that are outside the Scope of Work, but which are related to the City's debt management and financing or evaluate or recommend potential financing structures or strategies ("Special Project Work"). Special Project Work will be pursuant to a written agreement between the Director of Finance and Bond Counsel entered into prior to the commencement of the Special Project Work that outlines the scope and estimated cost of the Special Project Work. Special Project Work will be compensated at the hourly rates described in Section A5.B PAYMENT in Exhibit A, unless otherwise agreed to in writing by the Director of Finance. The City is only obligated to pay Bond Counsel for Special Project Work if it is pursuant to the requirements of this section. By way of example, Special Project Work might include preparing requests for private letter rulings from the IRS, or no-action letters from the SEC, assistance with an unexpected change of use of a debt-financed facility, work on a new multi-jurisdictional or joint public-private financing, or defeasing existing bonds without issuing new debt.

4.0 PROPOSAL FORMAT

Responses to the RFP are limited to five (5) typed pages plus any required forms.

5.0 PROPOSAL CONTENT

Experience and Qualifications

- 5.1 In two pages or less, provide a brief statement explaining why the City should consider your firm for Bond Counsel services, including your firm's experience in providing legal services related to: a) general public finance, b) relevant federal tax and securities laws, c) general obligation debt, d) revenue debt (including experience with related utilities), e) special financings, e.g. tax credit subsidy bonds, public-private partnerships, etc. and f) recent trends in compliance and enforcement initiatives. The respondent must have experience and capacity to provide legal services specifically related to public finance in Washington State under Washington State law.

- 5.2 Provide a listing of all cities, counties, or other governmental units for which the firm is currently under contract as bond counsel, including the lead attorney assigned to each. List the firm’s most recent experience as lead bond counsel since January 1, 2015 according to the form below.

Type	# of Issues Since 1/1/15	Aggregate \$ Value of Issues Since 1/1/15
G.O. Bonds & Notes: Fixed Rate		
G.O. Bonds & Notes: Variable Rate		
Revenue Bonds & Notes: Fixed Rate		
Revenue Bonds & Notes: Variable Rate		
L.I.D. Bonds		
Certificates of Participation		
Commercial Paper		

- 5.3 Provide the names, office location and qualifications and experience of the specific individuals who will be assigned to this contract, including their specific experience with public finance and related Washington State and federal laws. Identify the lead attorney for the contract, as well as for the following work areas: general obligation bonds, Municipal Power and Light revenue bonds, Water System revenue bonds, Drainage and Wastewater revenue bonds, Solid Waste revenue bonds, tax issues, and securities/disclosure issues. Describe the anticipated division of duties among partners, associates, and paralegals. If any additional lawyers with your firm may be available for consultation, identify them and their specialized expertise.
- 5.4 Identify the partner(s) or principal(s) whose name and individual manual signature will appear on the legal opinions along with the firm name.
- 5.5 Provide at least two references each for: a) general obligation bond issues, b) revenue bond issues, c) tax counsel, d) disclosure counsel, and one reference for e) adjustable rate bond issues, for which the firm has acted as bond counsel. Provide the individual’s name, agency, address and phone number for each reference.
- 5.6 Disclose any potential conflicts of interest as defined in Section A.10 CONFLICT OF INTEREST in Exhibit A, and any pending or threatened litigation or governmental investigation or inquiry, formal or informal.

- 5.7 **Subcontracting.** Identify any portion of the Scope of Work that you intend to subcontract. If Bond Counsel intends to subcontract any portion of the work, it shall promote and seek inclusion of woman and minority owned businesses for any subcontracting opportunities within the Scope of Work. A woman or minority business is one that self-identifies to be at least 51% owned by a woman or a minority. If you will subcontract any portion of the work, provide a Women and Minority Business Inclusion Plan, the form of which is attached as Exhibit F to the Bond Counsel Agreement in Exhibit A, which will be included as a part of any final agreement (see Section B3: SOCIAL EQUITY REQUIREMENTS of Exhibit A). The City reserves the right to approve any subcontract proposed for the Scope of Work.
- 5.8 Submit the City of Seattle Consultant Questionnaire attached as Exhibit B or available here:
- <http://www.seattle.gov/Documents/Departments/FAS/PurchasingAndContracting/Consulting/3ConsultantQuestionnaire.docx>
- 5.9 Submit any additional information as may be appropriate under Sections 11, 12 and 13 below.
- 5.10 **Fees.** The City intends to compensate Bond Counsel based upon the size and complexity of each financing, with a cap as described below and more particularly described in Section A5 PAYMENT in Exhibit A. Financings include issuance of bonds, notes, leases and other evidences of indebtedness.

Fees will be structured with a fixed dollar amount per type of issue, regardless of the issue size, and a fee based on the dollar size (par amount or, in the case of lease debt, the principal amount) of the issue. For example, general obligation bonds may be priced at a \$4,000 fixed fee plus \$0.05 per \$1,000 of bonds issued. Under this pricing, a \$50 million general obligation bond would have a fixed fee of \$4,000 plus \$2,500 in variable costs, for a total fee of \$6,500. A general obligation issue of \$125 million would have a fixed fee of \$4,000 plus \$6,250 in variable costs, for a total fee of \$10,250.

List the firm’s fees for each financing type according to the following schedule. Also list hourly fees by individual assigned to the contract which will be the basis for payment for any Special Project Work, including any subcontractors you are proposing for the work.

Fees		
Type	Fixed Fee (\$ per Issue)	Variable Fee (\$ per \$1,000 of Issue Size)
G.O. Bonds & Notes: Fixed Rate		
G.O. Bonds & Notes: Variable Rate		
Revenue Bonds & Notes: Fixed Rate		
Revenue Bonds & Notes: Variable Rate		
L.I.D. Bonds		
Certificates of Participation		
Commercial Paper		

Bond Anticipation Note fee will be _____% of the total regular applicable bond fee.

Hourly Fees for Special Project Work

Name of Individual	Hourly Rate

For purposes of calculating fees, proposers should take into consideration the terms and conditions of payment outlined in Section A.5 PAYMENT in Exhibit A. Unless otherwise expressly noted in your proposal, the review panel will evaluate your proposed fees with reference to the terms of payment in Section A.5. A financing is considered to be a single issue as long as the various components of the issue are developed in a single process. Separation of the issue into two or more series, combination of new money and refunding portions, authorization by more than one ordinance and/or multiple closing dates would not

affect the treatment of a financing as a single issue. See Section A5.A in Exhibit A for more detail on what constitutes a single issue.

For example: for a single general obligation issue of \$20,000,000 new money and \$10,000,000 refunding (for a total size of \$30,000,000), bond counsel's fee would be calculated as follows:

$$\begin{aligned}
 & \left(\frac{\$20 \text{ m.}}{\$30 \text{ m.}} \times \text{Rate for new money G.O. issues} \times \$30 \text{ m.} \right) \\
 & \quad \text{PLUS} \\
 & \left(\frac{\$10 \text{ m.}}{\$30 \text{ m.}} \times \text{Rate for refunding G.O. issues} \times \$30 \text{ m.} \right) \\
 & = \text{Bond Counsel fee}
 \end{aligned}$$

Any issue over \$150,000,000 will be deemed to be an issue of \$150,000,000 for purposes of fee calculation as more particularly described in Section A5.A in Exhibit A.

5.11 Additional fees if Bond Counsel prepares the Official Statement, as described in Section A2.S SCOPE OF WORK in Exhibit A. Please complete the matrix below.

For drafting, typesetting and managing production, and distribution of the Official Statement, including the production of the Preliminary Official Statement, for bonds or other obligations, Bond Counsel shall be compensated, in addition to its bond counsel fee as set forth in Section A5.A in Exhibit A, as follows for each Official Statement:

Obligation Type:	First OS Bond Counsel is responsible for (or after 3 years since last OS for same type*)	Next OS (for same type of bonds dated within 4 mos. of Previous OS.	OS (for same type of bonds) dated between 4 mos. and 3 years of last OS
General Obligation			
Revenue Obligations			
Bonds Guaranteed by City or with City Credit Enhancement			

* There are currently five types of Official Statements corresponding to each of the following obligations: General Obligations, City Light, Water, Drainage and Wastewater, and Solid Waste

No out-of-pocket costs paid to third parties shall be reimbursed, except where they are pre-approved in writing by the Director of Finance or his designee and are incurred in connection with the printing and distribution of the Official Statement.

Bond Counsel fees and any additional fees for preparing the Official Statement, if any, will be paid from the proceeds of the debt issuance upon satisfactory completion of the project and submission of an invoice to the Director of Finance.

6.0 PRELIMINARY SCHEDULE

Request for Proposals Issued ----- August 5, 2016
Questions/Requests for Clarifications Due -- August 16, 2016
Proposals Due----- August 26, 2016
Interviews (if any)----- Week of September 12, 2016
Selection ----- By September 30, 2016

7.0 PROPOSAL SUBMITTAL REQUIREMENTS

One (1) electronic copy to Michael Van Dyck and Kristin Lamson via email: michael.vandyck@seattle.gov and kristin.lamson@seattle.gov

8.0 MODIFICATION, CLARIFICATION AND SELECTION

- 8.1 The City of Seattle will not reimburse the respondents to this request for any costs involved in the preparation and submission of proposals, or for preparation of and attendance at any interviews.
- 8.2 This Request For Proposal (RFP) does not obligate the City of Seattle to contract for any services.
- 8.3 The City of Seattle reserves the right to:
 - a) Request clarification of any proposal;
 - b) Modify or alter any of the requirements herein;
 - c) Reject any or all proposals, waive immaterial irregularities or informality in any proposal, and reissue this or a modified RFP;
 - d) Conduct interviews with one or more proposers, if any.

- e) Contact one or more references, including references named or not named by the Proposer. The City may also consider the results of performance evaluations issued by the City on past projects.
- f) Review standard industry information, e.g. the Bond Buyer's Municipal Marketplace (the "Redbook") as part its evaluation.
- g) Negotiate a contract with the selected firm(s), including changes in the selected firm's initial terms as outlined in the RFP response; and
- h) Terminate contract negotiations with a selected firm if unable to reach agreement.
- i) Award more than one contract for any category of work outlined in the Scope of Work in Exhibit A, if it is in the City's best interests.

8.4 If the City is unable to reach final agreement with a firm initially chosen, the City reserves the right to select and negotiate with a firm or firms with the next most favorable proposal(s) until an agreement is reached or the City decides not to enter into an agreement under this RFP.

9.0 SELECTION PROCESS

The Director of Finance will make the final selection of one or more firms to be Bond Counsel to the City, after consultation with a review panel including, but not limited to, the City Attorney, or designee. It is anticipated that the evaluation will consist initially of a review of the written RFP responses and then interviews, if any.

Once a firm is selected, the Office of the Seattle City Attorney may review any legal documents that are proposed to be executed, and the City may negotiate modifications or alternatives to those proposed.

10.0 METHOD OF PROPOSAL EVALUATION

All proposals will be evaluated by a review panel including, but not limited to employees from the Department of Finance and Administrative Services and the City Attorney's Office. After reviewing the written proposals, the review panel may, in its discretion, recommend one or more firms for an in person interview. The review panel will recommend the firm or firms anticipated to provide the highest quality of legal services to the City, giving consideration to the following criteria:

- a) Qualifications
- b) Experience
- c) Accessibility and location of the individuals to be assigned
- d) Cost of services
- e) Expected level of service
- f) Clarity of proposal
- g) Demonstrated understanding of relevant Washington State law
- h) Demonstrated understanding of relevant Federal law
- i) Familiarity with City's various lines of business
- j) Other related factors, such as existence of conflicts of interest and willingness to sign form of contract

11.0 CONFLICT OF INTEREST

See section A10.B CONFLICT OF INTEREST in Exhibit A and provide the initial listing of respondent's clients seeking permits, approvals or other interactions with the City that may be adverse to the City as may be required.

12.0 CONTRACT

The contract will be substantially in the form of Exhibit A. If a proposer is unable to agree to any of the terms in Exhibit A, the proposal must clearly indicate that fact, and should provide a rationale for rejecting the term and include any proposed language to replace the rejected term, if any. The City is not obligated to accept such proposed changes. The City cannot modify provisions mandated by Federal, State or City law, e.g. Equal Benefits.

13.0 PROPRIETARY MATERIALS

Under Washington State Law (reference RCW Chapter 42.56, the Public Records Act) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.

The State of Washington's Public Records Act requires that public records must be promptly disclosed by the City upon request unless that RCW or another Washington State statute specifically exempts records from disclosure. Exemptions are narrow and explicit and are listed in Washington State Law (Reference RCW 42.56 and RCW 19.108).

Proposers must be familiar with the Washington State Public Records Act and the limits of record disclosure exemptions. For more information, visit the Washington State Legislature's website at <http://app.leg.wa.gov/rcw/default.aspx?cite=42.56>.

Marking Your Records Exempt from Disclosure (Protected, Confidential, or Proprietary)

As mentioned above, all City of Seattle offices ("the City") are required to promptly make public records available upon request. If you believe any of the records you are submitting to the City as part of your proposal or contract work products, are exempt from disclosure you can request that they not be released before you receive notification. To do so you must complete the City Non-Disclosure Request Form ("the Form") attached as Exhibit ___ and very clearly and specifically identify each record and the exemption(s) that may apply. (If you are awarded a City contract, the same exemption designation will carry forward to the contract records.)

The City will not withhold materials from disclosure simply because you mark them with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected. Do not identify an entire page as exempt unless each sentence is within the exemption scope; instead, identify paragraphs or sentences that meet the specific exemption criteria you cite on the Form. Only the specific records or portions of records properly listed on the Form will be protected and withheld for notice. All other records will be considered fully disclosable upon request.

If the City receives a public disclosure request for any records you have properly and specifically listed on the Form, the City will notify you in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow you up to ten business days to file a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a Court order within the ten days, the City may release the documents.

The City will not assert an exemption from disclosure on your behalf. If you believe a record(s) is exempt from disclosure you are obligated to clearly identify it as such on the Form and submit it with your solicitation. Should a public record request be submitted to the City for that record(s), you can then seek an injunction under RCW 42.56 to prevent release. By submitting a proposal, the proposer acknowledges this obligation; the proposer also acknowledges that the City will have no obligation or liability to the proposer if the records are disclosed.

Requesting Disclosure of Public Records

The City asks proposers and their companies to refrain from requesting public disclosure of proposals until an intention to award is announced. This measure is intended to protect the integrity of the solicitation process particularly during the evaluation and selection process or in the event of a cancellation or re-solicitation. With this preference stated, the City will continue to be responsive to all requests for disclosure of public records as required by State Law. If you do wish to make a request for records, please address your request in writing to Michael Van Dyck.

14.0 INFORMATION

Questions regarding this RFP should be directed to Michael Van Dyck, Director of Debt Financing, (206) 684-8347 by August 16, 2016. Unless authorized by the Director of Debt Financing, no other City official or employee may speak for the City regarding this solicitation until award is complete. Any Proposer contacting other City officials or employees does so at Proposer's own risk. The City is not bound by such information.

15.0 EFFECTIVE DATES OF OFFER

Proposals are valid until the City completes award or rejects all proposals.

16.0 PROTESTS

Interested parties that wish to protest any aspect of this RFP selection process shall provide written notice to the Director of Debt Financing. The City has rules to govern the rights and obligations of interested parties that desire to submit a complaint or protest to this process. Please see the City website at <http://www.seattle.gov/city-purchasing-and-contracting/solicitation-and-selection-protest-protocols>. Interested parties have the obligation to know of and understand these rules, and to seek clarification from the City. Note there are time limits on protests, and submitters have final responsibility to learn of results in sufficient time for such protests to be filed in a timely manner.

17.0 INSTRUCTIONS TO THE SELECTED PROPOSER

The proposer selected to serve as Bond Counsel will receive an Intent to Award Letter from the Director of Finance after award decisions are made by the City. The Letter will include instructions on execution of the contract, including any final submittals due prior to or upon execution of the contract.

Once the City has finalized and issued the contract for signature, the selected Bond Counsel must execute the contract and provide all requested documents within ten (10) business days. If the selected Bond Counsel fails to execute the contract and provide all required documents within the ten (10) day time frame, the City may cancel the award and proceed to the next ranked proposer, or cancel or reissue this solicitation. Cancellation of an award for failure to execute the Contract as attached may disqualify the firm from future solicitations for this same work.

EXHIBITS:

Exhibit A: Form of Bond Counsel Agreement

Exhibit B: Consultant Questionnaire (see Section 5.8 for URL)

Exhibit A

CONTRACT NO. _____

BOND COUNSEL AGREEMENT

THIS AGREEMENT is made and entered into by and between The City of Seattle, acting by and through the City's Director of Finance (the "City") and _____.

WHEREAS, the City is in need of legal services and opinions related to debt issued by the City and debt-related matters; and

WHEREAS, the City, on August 5, 2016, issued its Request for Proposal for Bond Counsel Services ("RFP"), and on August 26, 2016, Bond Counsel responded to the RFP with its proposal ("Proposal"), which was selected by the City; and

WHEREAS, the parties have since negotiated the remaining terms of this Agreement,

NOW, THEREFORE, the parties agree as follows:

Part A Special Terms and Conditions

Section A1. TERM AND CONDITIONS OF CONTRACT

This Agreement shall be in effect for a two-year term beginning November 1, 2016. Legal services will cover debt issues and debt-related matters initiated during the term of the Agreement and Special Project Work, as described herein, requested and agreed to during the term of this Agreement. This Agreement can be extended up to an additional two years until October 31, 2020, at the sole discretion of the City, by written notice from the Director of Finance to Bond Counsel. The City reserves the right to engage other bond counsel during the term of the Agreement at its discretion for any debt or financing work of the City, including work described in Sections A2 and A3 below. Bond Counsel shall be entitled to continue to work, under the provisions of this Agreement, on debt issues which are significantly underway (as reasonably determined by the Director of Finance) at the expiration of the term of this Agreement until their completion or abandonment.

Section A2. SCOPE OF WORK

Bond Counsel shall be considered an attorney for the entire City and all its departments, agencies, branches, boards, commissions and offices and the City's lead contact for the scope of work will be the Director of Finance or his designee. The scope of work to be provided by Bond Counsel includes, but is not limited to the following:

- A. Providing written and oral instructions and advice to the City covering the procedural and legal requirements for each financing, and providing advice between financings on related legal matters including the effect of introduced, potential, and enacted legislation that might impact existing or future financings;
- B. For each parity bond issue, reviewing prior parity covenants and recommending springing provisions as appropriate;
- C. Preparing draft and final authorizing resolutions, ordinances, notices of sale, arbitrage certificates, tax certificates, bond purchase contracts and all other closing certificates or documents; and presiding over bond closings;
- D. Consulting with the City's financial advisor, and reviewing any preliminary and final official statements to ensure that the documents are complete and accurate concerning procedural and legal matters; drafting sections of the official statements describing the bonds, any related financing documents, sources of repayment and security for the bonds, purposes of the bonds, and purpose and application of proceeds; drafting sections of the official statement summarizing the bond ordinance and/or resolution; drafting sections of the official statement describing tax exemption and other federal tax consequences; drafting sections of the official statement describing continuing disclosure;
- E. Consulting with appropriate City departments associated with each debt issue to ensure that all legal matters associated with the issue are understood and provided for, with particular attention during the debt planning phase to explaining and ascertaining the existence of the legal requisites for tax exempt status; and instructing the City on compliance with provisions of all applicable federal tax and securities laws;
- F. Attending, as requested, City Council and "DMPAC" meetings at which the debt issues are considered and attending bond sales and closings and attending other meetings with City officials and staff as requested;
- G. Printing and delivering the debt instruments including reviewing and approving note and bond proofs to ensure that the obligations are perfectly accurate in every detail, or assisting the City in the issuance and delivery of book-entry obligations;
- H. Preparing and filing completed Internal Revenue Service forms such as the 8038 on behalf of the City and its utilities;
- I. Providing written opinions to the City and others at City request on the due authorization and validity of debt instruments and underlying documents, application of debt limits, and whether the debt instruments are valid and tax exempt, if appropriate;
- J. Providing an opinion to the City and others at the City's request that the sections of the

- Official Statement specifically identified in subparagraph D above, or any other sections drafted by Bond Counsel, are true and accurate, and correctly summarize the documents they purport to summarize; providing a 10b-5 opinion expressing that no facts have come to Bond Counsel's attention which would cause Bond Counsel to believe that the Official Statement is materially false or misleading or that material information was omitted; and providing other customary supplemental opinions;
- K. Providing detailed instructions for complying with arbitrage rebate reporting requirements, and assisting the City in preparing any information required by the Internal Revenue Service related to arbitrage reporting;
 - L. After delivery of bonds and/or notes, providing four (4) paper copies of all certificates, ordinances and affidavits associated with the bond sale (bond/note transcript) bound in 4 hard-cover 3-ring binders and four (4) copies on CD-ROM.
 - M. Assisting the City in meeting its obligations for initial and continuing disclosure under SEC Rule 15c-12;
 - N. Providing legal assistance to the City for financing leases, conditional sales contracts and other borrowing arrangements, as requested;
 - O. Reviewing legal questions arising from post-issuance matters; performing such legal work as is necessary to resolve such issues;
 - P. Providing general legal advice to the City which is related to potential new debt financings but is not yet part of a specific debt issue, but shall not receive any specific payment therefore;
 - Q. Provide all notices and information required by bond insurers and secure their approval, as required when the City purchases additional bond or reserve policies.
 - R. Providing all other services normally performed by bond counsel; and
 - S. At the City's request, either for selected debt issues or for all, and in consultation with the Director of Finance, the City Attorney's Office and the City's issuing departments, prepare and have printed official statements and other similar offering disclosure documents, including supplements (collectively referred to below as "official statements") for City debt issues in compliance with applicable disclosure requirements and guidelines of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission. Portions of the material for the official statement will be supplied by the City. City staff shall provide statistical and financial data and narrative descriptions, all regarding City government and its relevant departments and utilities. Other portions, including but not limited to all demographic and economic information, will be supplied by Bond Counsel. At the City's request, Bond Counsel will draft, typeset and manage production and distribution of both physical copies and electronic copies of the official statements for specified bond issues. Bond Counsel will provide a closing

opinion to the City and others at the City's request that includes a provision substantially in the form of: "We have been responsible for overseeing the drafting and distribution of the Official Statement, working with officials of the City (including the Department of Finance and Administrative Services, [relevant utility] and the Law Department) and representatives of [Financial Advisors]. We were primarily responsible for the following portions of the Official Statement: all descriptions of the Bonds, Use of Proceeds, Security and Sources of Payment for the Bonds, the description of tax laws for the City's revenue sources and laws concerning the City's debt capacity [for general obligation debt], the description of the property tax system [for general obligation debt], the description of initiative and referendum powers, Legal and Tax Information, and Other Bond Information [add other portions as applicable], and affirm that as of the Official Statement's date and of the date of this opinion, these portions were and are true and accurate, correctly summarize what they purport to describe, and neither contained nor contain any untrue or misleading statement of material fact nor omitted nor omit to state any material fact required to be stated therein for the purposes for which the Official Statement is to be used. Further, we were primarily responsible for the portion of the Official Statement describing Demographic and Economic Information; that portion is from sources we believe to be accurate. Without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in portions of the Official Statement for which we were not primarily responsible (for example, financial, engineering and operating information about the City [and the relevant utility]), no facts have come to our attention that caused us to believe that the Official Statement as of its date, or as of the date hereof, contained or contains any untrue statement of material fact or omitted or omits to state any material fact required to be stated therein for the purposes for which the Official Statement is to be used or necessary in order to make the statement therein, in light of the circumstances under which they were made, not misleading."

Bond Counsel shall provide the City only its own opinions on the matters enumerated above, not that of a subcontractor, unless specifically requested or authorized by the Director of Finance. All written work performed by Bond Counsel's subcontractor(s) during a financing shall have been reviewed and approved by Bond Counsel prior to dissemination to the City or other persons or entities.

Each opinion provided by Bond Counsel must be authored and signed manually in the individual name of a qualified partner or principal of Bond Counsel.

All draft documents prepared by Bond Counsel shall be provided to the City in Microsoft Word format showing all revisions black-lined against earlier versions as specified by the City.

Section A3. SPECIAL PROJECT WORK

The Director of Finance may request, in writing, that Bond Counsel provide legal services or opinions that are outside the scope of work detailed in Section A2 SCOPE OF WORK above, but

which are related to the City's debt management and financing and evaluate or recommend potential financing structures and strategies ("Special Project Work"). Special Project Work will be pursuant to a written agreement between the Director of Finance and Bond Counsel entered into prior to the commencement of the Special Project Work that outlines the scope and estimated cost of the Special Project Work. The Special Project Work will be compensated at the hourly rates described in Section A5.B below, unless otherwise agreed to in writing by the Director of Finance. The City is only obligated to pay Bond Counsel for Special Project Work if it is pursuant to the requirements of this section. By way of example, Special Project Work might include preparing requests for private letter rulings from the IRS or no-action letters from the SEC, assistance with an unexpected change of use of a debt-financed facility, work on a new multi-jurisdictional or joint public-private financing, or defeasing existing bonds without issuing new debt.

Section A4. CONDUCT OF WORK; SUBCONTRACTING

The work under this Agreement shall be performed only by the individuals identified in Bond Counsel's Proposal unless Bond Counsel obtains, for each additional person, including subcontractors, the prior written approval of the Director of Finance or his designee. All work under this Agreement, including that of subcontractors, shall be performed by or under the direct supervision and control of a partner or principal of the firm who has been individually identified in the Bond Counsel's proposal. Each partner or principal of the firm who has been identified in Bond Counsel's proposal accepts individual responsibility and liability for the work performed under this Agreement.

Section A5. PAYMENT

A. Debt Issuance Fees

Debt issuance fees for services described in Section A2.A through Section A2.S shall be paid to Bond Counsel from the proceeds of the debt sales upon satisfactory completion of the project and submission to the Director of Finance of an invoice detailing the actual work performed. Bond Counsel shall promptly pay any subcontractors within 30 days of receipt of payment from the City. If the debt is not sold, Bond Counsel shall receive no fee for work on that proposed debt issue, nor will Bond Counsel’s expenses be reimbursed. Bond Counsel shall receive no specific payment for work described in Section A2.P above. Bond Counsel shall be compensated for all services in Section A2.A through Section A2.S related to the City's issuance of debt, including any subcontractor services, according to the following fee schedule.

Type	Fixed Fee (\$ per Issue)	Variable Fee (\$ per \$1,000 of Issue Size)
G.O. Bonds & Notes: Fixed Rate		
G.O. Bonds & Notes: Variable Rate		
Revenue Bonds & Notes: Fixed Rate		
Revenue Bonds & Notes: Variable Rate		
L.I.D. Bonds		
Certificates of Participation		
Commercial Paper		

Bond Anticipation Note fee will be ____% of the total regular applicable bond fee.

Fees for other types of debt issues, not specifically detailed above, will be as agreed in advance of issuance by the City and Bond Counsel.

For purposes of calculating fees, a financing is considered to be a single issue as long as the various components of the issue are developed in a single process. Separation of the issue into two or more series, combination of new money and refunding portions, authorization by more than one ordinance and/or multiple closing dates would not affect the treatment of a financing as a single issue. Fees for a single issue with two or more series will be calculated on a pro-rata basis. If Bond Counsel prepares a bond ordinance that authorizes one or more series of bonds to be later specified by resolution, and if those later series of bonds are detailed by resolutions passed more than 30 days apart or close more than 30 days apart, then each series of bonds will be treated as a separate issue for purposes of the bond counsel fee, except that Bond Counsel will provide a 5% reduction in its fee on each series after the first one in order to take into account the fact that all series were approved by a common ordinance. On the other hand, if Bond Counsel prepares two or more separate bond ordinances that authorize one or more series of bonds to be

later specified by resolution and if the bonds are sold either as a single bond series or as multiple series, backed by a pledge of the same fund, that close no more than 30 days apart, then all such series of bonds will be treated as a single bond issue for the purposes of the bond counsel fee (with prorating of the various components of the fee, if applicable), with the addition of a premium of 5% of the total issue fee for each authorizing ordinance after the first one. This situation is most likely to occur if the City authorizes new money and refunding bonds in separate ordinances, but sells the bonds in a single process as a single series or as two series that close no more than 30 days apart.

Furthermore, when one or more ordinances authorize multiple series of bonds and the separate series, were they to close within 30 days of one another, would be treated as a single issue for fee purposes as stated above, but at the time work on the second series begins, either party believes that separate series will be developed in a separate process, Bond Counsel and the City may prearrange in writing a separate billing arrangement. (New money and refunding series are not, for that characteristic alone, considered “developed in a separate process,” but fixed and variable series may be, depending on the circumstances). In the absence of such a special arrangement, the transaction will be treated as a single issue for purpose of the bond counsel fee (with prorating of the various components of the fee, if applicable).

Any issue over \$150,000,000 will be deemed to be an issue of \$150,000,000 for purposes of fee calculation. This will result in a prorating of fees when two different series or types of debt are issued in a single issue. For example, for a single general obligation issue of \$180 million new money and \$90 million refunding (for a total bond issue size of \$270 million), Bond Counsel’s fee would be calculated as follows:

<u>\$180 m.</u>	
\$270 m.	X new money G.O. fee for \$150 million issue
	Plus
<u>\$90 m.</u>	
\$270 m.	X refunding G.O. fee for \$150 million issue.

Fees for bond sales over \$150,000,000 with more than one issue will be calculated on a pro-rata basis.

B. Special Project Work

For all Special Project Work under Section A3 above, Bond Counsel shall submit to the Director of Finance written invoices based on the following hourly fees:

Name of Individual	Hourly Rate

For work by subcontractor:

Name of Individual	Hourly Rate

Invoices for any work compensated on an hourly rate basis shall be accompanied by time and activity reports in a format acceptable to the City. The following is an acceptable format:

Name of Project Name of Individual Activity No. of Hrs Fee

Bond Counsel shall promptly pay any subcontractors within 30 days of receipt of payment from the City.

C. Expenses

No out-of-pocket costs paid to third parties shall be reimbursed, except where they are pre-approved in writing by the City and are incurred in connection with the printing and distribution of the official statement as noted in Section A5.D below.

D. Official Statement Preparation and Printing

If the City requests Bond Counsel to provide services for drafting, typesetting and managing production, and distribution of the Official Statement, including a Preliminary Official Statement (OS) for bonds or other obligations as described in Section A2.S above, Bond Counsel shall be compensated, in addition to its bond counsel fee as set forth in Section A5.A above, as follows for each Official Statement:

Obligation Type:	First OS Bond Counsel is responsible for (or after 3 years since last OS for same type*)	Next OS (for same type of bonds dated within 4 mos. of Previous OS.	OS (for same type of bonds) dated between 4 mos. and 3 years of last OS
General Obligation			
Revenue Obligations			
Bonds Guaranteed by City or with City Credit Enhancement			

* There are currently five types of Official Statements corresponding to each of the following obligations: General Obligations, City Light, Water, Drainage and Wastewater, and Solid Waste

No out-of-pocket costs paid to third parties shall be reimbursed, except where they are pre-approved in writing by the City and are incurred in connection with the printing and distribution of the Official Statement.

E. General

Bond Counsel shall be responsible for payment of all business and occupation taxes or other taxes (including income taxes and any other taxes of any sort whatever except applicable retail sales and service taxes payable by law by the City) resulting from the performance of professional services work under this Agreement. The City shall be responsible, to the extent applicable, for the payment of any retail sales taxes imposed upon the sale of professional services provided under this Agreement.

Section A6. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

All notices and other material to be delivered hereunder shall be in writing and shall be delivered or mailed to the following addresses unless modified by written notice to the other party:

If to the City: City of Seattle, Department of Finance and Administrative Services
Michael Van Dyck
Director of Debt Financing
michael.vandyck@seattle.gov

P.O. Box 94669
Seattle, WA 98124-4669
Phone: (206) 684-8347

If to Bond Counsel:

Section A7. INDEMNIFICATION

Unless otherwise inconsistent with law, Bond Counsel agrees to defend, indemnify, and hold the City harmless from any and all liabilities (including but not limited to, all claims, suits, actions, administrative proceedings and all attorney's fees, costs, losses, expenses, awards and judgments associated therewith) caused by, arising out of or resulting from the negligent acts or omissions of Bond Counsel, its agents or employees, in connection with Bond Counsel's performance or lack of performance under this Agreement except to the extent damages result from the sole negligence of the City. Bond Counsel waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the City and its officials, agents or employees. The parties acknowledge that this waiver has been negotiated by them. This provisions will survive expiration or termination of this Agreement.

Bond Counsel agrees to indemnify the City from any and all liabilities (including but not limited to, all claims, suits, actions, administrative proceedings and all attorney's fees, costs, losses, expenses, awards and judgments associated therewith) resulting from actions taken against the City in connection with the City's award of a bond counsel contract pursuant to the City's issuance of a Request for Proposals for Bond Counsel, dated _____.

Section A8. INSURANCE

- A. Insurance certification must be submitted to the City. See "INSURANCE REQUIREMENTS AND TRANSMITTAL FORM" attached as Exhibit D.

Section A9. COMMISSIONS AND FEES

Bond Counsel warrants that it has not employed or retained a company or person other than a bona fide employee working solely for Bond Counsel to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person other than bona fide employees or subcontractors working solely for Bond Counsel any fee, commission, percentage, brokerage fee, gifts or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability, or in its discretion to deduct from the Agreement price the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Section A10. CONFLICT OF INTEREST

- A. Bond Counsel shall be considered to be attorneys for the entire City of Seattle and all its departments, agencies, branches, boards, commissions, and officers.
- B. Bond Counsel shall notify and request waivers from both the Director of Finance and the City Attorney in writing in each instance as soon as Bond Counsel becomes aware that i)

there may arise, there is, or there may be an actual or potential conflict of interest; ii) if it is subject to material litigation (or threatened litigation) or iii) if it or any of its attorneys is the subject of a formal or informal governmental inquiry or investigation. Also, Bond Counsel may seek a waiver from both the Director of Finance and the City Attorney prior to seeking to undertake non-City legal work, when the City response to such a request would be useful to Bond Counsel. The City reserves the right to decline to waive an actual or potential conflict in each case.

Bond Counsel shall not engage in conduct that presents an actual or potential conflict of interest as defined in Section A10.C of this Agreement, unless both the Director of Finance and the City Attorney waive the conflict or potential conflict in writing (which may include email). The City recognizes that attorneys in Bond Counsel's firm from time to time may represent clients seeking permits and approvals from City offices or doing other City business. Bond Counsel represents that all such representations that presently exist are shown in Exhibit __. The City agrees that the representations shown in Exhibit __ in and of themselves, do not currently constitute a conflict. Bond Counsel shall (i) every twelve months during the term of this Agreement provide the City with a then-current listing of all representations of clients seeking permits or approvals from City offices or contemplating or having any other type of interaction with the City, indicating by asterisk or other notation which of those clients have been added to the list since the last compilation provided to the City and also for which listed clients a new such matter has been undertaken since the last compilation, and (ii) promptly inform the City Attorney and Director of Finance of any representation of clients seeking such permits or approvals or of any other representation that in Bond Counsel's reasonable judgment has become or may develop into a situation adverse to the interests of the City. Upon such notification under clause (i) or (ii), or upon the City discovering a representation that may be adverse to the City, the City shall, within ten working days after prompt and full disclosure by Bond Counsel of the material facts, determine either that the representation does not constitute a conflict of interest or that a conflict does or may exist. If the City in its sole discretion determines that a conflict does or may exist, the City, at its option, may waive the conflict with or without specific conditions or limitations, may engage other bond counsel, or may terminate this Agreement. Such termination shall constitute "termination of Agreement for cause" under Section B13.

- C. At a minimum, a conflict of interest includes conflicts described in the Rules of Professional Conduct. Furthermore, under this Agreement with Bond Counsel, a conflict of interest will be deemed to exist whenever Bond Counsel or any of its subcontractors:
1. in any manner, directly or indirectly, participates in or benefits from a debt issuance transaction upon which Bond Counsel has provided or is providing advice, except for the payments from the City under this Agreement with the City;
 2. provides advice or participates in any transaction that is, or would appear to a reasonable person to be, in conflict or incompatible with the proper duties of

Bond Counsel as provided in this Agreement, or which would affect, or would appear to a reasonable person to affect, the independent judgment of Bond Counsel;

3. acts as underwriter's counsel for, or in any other capacity (other than as bond counsel to The City of Seattle) becomes involved with, any City-sponsored debt during the term of this Agreement without express advance written approval of the Director of Finance and the City Attorney. City-sponsored debt shall include debt issued directly by the City or by:

a. any agency, district, utility or other entity which is issuing debt wholly or partially guaranteed by the City of Seattle, or for which the City has pledged future expected revenues, or for which the City is providing debt service or credit enhancement, whether directly or indirectly; or

b. any agency, district, utility or other entity with respect to a project in which that entity is participating as a joint venture with The City of Seattle; or

c. any agency, district, utility or other entity in which the City exercises significant control (significant control shall generally mean 25% or more ownership); or

d. any agency, district, utility or other entity in which the City has a substantial financial interest (substantial financial interest shall generally mean an Agreement to purchase 25% or more of the output of a project for which the debt is being issued).

D. Notwithstanding anything else in this Section A10, the City approves Bond Counsel's representation, as bond counsel, of public development authorities of the City with respect to projects or financings that do not fall within clause (a), (b), or (d) of subparagraph A10.C.3.

E. Bond Counsel's failure to comply with this Section A10 shall be considered a material breach of this Agreement. The City may impose either or both the following sanctions for failure to comply with this Section A10: suspension of the contract and/or termination; or disqualification of Bond Counsel from eligibility for providing services to the City for a period of not to exceed two (2) years.

Part B

General Terms and Conditions

1. TAXES, FEES AND LICENSES.

- A. Bond Counsel shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. It is the Bond Counsel's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. Where required by state statute, ordinance or regulation, Bond Counsel shall pay and maintain in current status all taxes necessary for performance. Bond Counsel shall not charge the City for federal excise taxes. The City will furnish Bond Counsel an exemption certificate where appropriate.
- C. As authorized by SMC, the Director of Finance and Administrative Services may withhold payment pending satisfactory resolution of unpaid taxes and fees due the City.

2. EQUAL BENEFITS.

Bond Counsel shall comply with SMC Ch. 20.45 and Equal Benefit Program Rules, which require Bond Counsel to provide the same or equivalent benefits ("equal benefits") to domestic partner of employees as Bond Counsel provides to spouses of employees. At City's request, Bond Counsel shall provide information and verification of Bond Counsel's compliance. Any violation of this Section is material breach, for which the City may exercise enforcement actions or remedies defined in SMC Chapter 20.45.

3. SOCIAL EQUITY REQUIREMENTS.

Bond Counsel shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Bond Counsel shall take affirmative actions to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap. Such efforts include, but are not limited to employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training. If Bond Counsel subcontracts any portions of the work, it shall seek inclusion of woman and minority businesses (WMBEs) for subcontracting. A woman or minority business (WMBE) is one that self-identifies to be at least 51% owned by a woman and/or minority. Such firms do not have to be certified by the State of Washington but must be registered in the City Online Business Directory. Inclusion responsibilities, if any, include those commitments described in the WMBE Inclusion Plan submitted with the Bond Counsel Proposal. Inclusion efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making schedule or requirement modifications that assist WMBE businesses to compete, targeted

recruitment, mentorships, using consultants or minority community organizations for outreach, and selection strategies that result in greater subcontractor diversity. The Inclusion Plan, if applicable, is incorporated herein by this reference as Exhibit F.

Bond Counsel shall maintain, for at least 12 months after completion of this Agreement, relevant records and information necessary to document Bond Counsel's compliance with the social equity requirements of this Agreement, including consideration of subcontractors and utilization of WMBEs, including written quotes or proposals submitted to Bond Counsel by all businesses seeking to participate as a subcontractor under this Agreement. The City shall have the right to inspect and copy such records.

4. AUDIT.

Upon request, Bond Counsel shall permit the City and any other governmental agency ("Agency") funding the work, to inspect and audit all pertinent books and records. This includes work of Bond Counsel, any subconsultants, or any other person or entity that performed connected or related services or work. Such books and records shall be made available at any and all times deemed necessary by the City or Agency, including up to six years after final payment. Such inspection and audit shall occur in King County, Washington, or other reasonable locations that the City or Agency selects. Bond Counsel shall supply or permit the City or Agency to copy such books and records. Bond Counsel shall ensure that inspection, audit and copying rights of the City or Agency is a condition of any subcontract, agreement or other arrangement under which any other persons or entity may perform work or services under this Agreement.

5. INDEPENDENT BOND COUNSEL.

The Bond Counsel is an independent consultant. This Agreement does not intend the Bond Counsel to act as a City employee. The City has neither direct nor immediate control over the Bond Counsel or the right to control the manner or means by which the Bond Counsel works. Neither the Bond Counsel nor any Bond Counsel employee shall be an employee of the City. The Bond Counsel is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Bond Counsel shall pay all income and other taxes as due. The Bond Counsel may perform work for other parties; the City is not the exclusive user of the services that the Bond Counsel provides.

6. KEY PERSONS.

The Bond Counsel shall not transfer or reassign any individual designated as a lead attorney for the work under this Agreement without the express written consent of the City, which shall not be unreasonably withheld. If any such individual leaves the Bond Counsel's employment, the Bond Counsel shall present to the City one or more individuals with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval does not release the Bond Counsel from its obligations under this Agreement.

7. ASSIGNMENT AND SUBCONTRACTING.

The Bond Counsel shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Bond Counsel shall incorporate by reference this Agreement, except as otherwise provided. The Bond Counsel shall ensure that all subconsultants comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Bond Counsel from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

8. SUBCONTRACT PAYMENTS REPORTING REQUIREMENTS.

If Bond Counsel has approved subcontractors for any portion of the work, Bond Counsel must complete an on-line Subcontractor Payment Report to record all payments to subcontractors at <http://web6.seattle.gov/FAS/CIDCC>. A unique Purchase Order number is required which may be obtained from <http://web6.seattle.gov/fas/summitpan/R297/R297.aspx>. Contact Steven Larson (206) 684-4529 or Miguel Beltran (206) 684-4525 for assistance. **Note:** The City is in the process of replacing its CIDCC reporting software with B2G Now, another on-line reporting tool. The City reserves the right to require the use of this alternative reporting tool if it is implemented during the term of this Agreement to record payment amounts and payment dates to subcontractors and to require the subcontractor to verify the information provided by Bond Counsel. The City will provide instruction to Bond Counsel if B2G Now is implemented.

Bond Counsel shall ensure that all subcontractors are registered in the City's Online Business Directory prior to completing the online report, at <http://www.seattle.gov/contracting/registration.htm>.

9. CITY ETHICS CODE (SMC 4.16.010 TO .105).

- A. Bond Counsel shall promptly notify the City in writing of any person expected to be a Bond Counsel employee, subconsultant, principal, or owner (each a "Bond Counsel Worker") and was a former City officer or employee within the past twelve (12) months.
- B. Bond Counsel shall ensure compliance with the City Ethics Code by any Bond Counsel Worker when the work or matter related to the work is performed by a Bond Counsel Worker who has been a City officer or employee within the past two years.
- C. Bond Counsel shall provide written notice to the City of any Bond Counsel Worker who shall or is expected to perform over 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those performed for the Bond Counsel and other hours that the worker performed for the City under any other contract. Such workers are subject to the City Ethics Code, SMC 4.16. The Bond Counsel shall advise their Bond Counsel Workers.
- D. Bond Counsel shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Bond Counsel.

Promotional items worth less than \$25 may be distributed by the Bond Counsel to City employees if the Bond Counsel uses the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

10. NO CONFLICT OF INTEREST.

Bond Counsel confirms that the Bond Counsel or workers have no business interest or a close family relationship with any City officer or employee who was or will be involved in the Bond Counsel selection, negotiation, drafting, signing, administration or evaluation of the Bond Counsel's work. As used in this Section, the term Bond Counsel includes any worker of the Bond Counsel who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. The term "close family relationship" refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or any parent, parent in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

11. ERRORS AND OMISSIONS, CORRECTIONS.

Bond Counsel is responsible for professional quality, technical accuracy, and the coordination of all other services furnished by or on the behalf of the Bond Counsel under this Agreement. Bond Counsel, without additional compensation, shall correct or revise errors or mistakes in Bond Counsel services immediately upon notification by the City. The obligation provided for in this Section regarding acts or omissions resulting from this Agreement survives termination or expiration of this Agreement.

12. DISPUTES.

Any dispute or misunderstanding that may arise under this Agreement shall first be through negotiations, if possible, between the Bond Counsel's Project Manager and the City's Project Manager. It shall then be referred to the Director of Finance and Bond Counsel's managing attorney. If such officials do not agree upon a decision within a reasonable period of time, either party may decline or discontinue such discussions and may then pursue the legal means to resolve such disputes, including but not limited to alternative dispute resolution processes. Nothing in this dispute process shall mitigate the rights of the City to terminate the contract. Notwithstanding all of the above, if the City believes in good faith that some portion of the work under this Agreement has not been completed satisfactorily, the City may require the Bond Counsel to correct such work prior to the City payment. The City will provide to the Bond Counsel an explanation of the concern and the remedy that the City expects. The City may withhold from any payment otherwise due, an amount that the City in good faith finds to be under dispute, or if the Bond Counsel provides no sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

13. TERMINATION

A. Termination of Agreement for Cause

If, through any cause Bond Counsel shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if Bond Counsel shall violate any of the covenants, agreements, assurances or stipulations of the Agreement, the City will have the right to terminate this Agreement by giving written notice to Bond Counsel at the address first noted herein of such termination, and specifying the effective date thereof, at least five (5) days before the effective date of termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, and reports prepared by Bond Counsel shall, at the option of the City, become the property of the City, and Bond Counsel shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and materials, unless the bond issue is not sold; but in no event shall the compensation received under this section exceed the amount that would have been received if this Agreement had not been terminated.

Notwithstanding the above, Bond Counsel shall not be relieved of liability to the City for damage to the City by virtue of any breach of the Agreement by Bond Counsel. The City may withhold any payments to Bond Counsel for the purpose of setoff until such time as the exact amount of damages due the City from Bond Counsel is determined.

B. Termination for Convenience of the City

The City may terminate this Agreement, in whole or in part, by giving written notice to Bond Counsel at the address first noted herein of such termination, and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described above, at the option of the City, shall become the City's property. If this Agreement is terminated under this subsection, then for each debt issue that is closed after the termination date, Bond Counsel shall be compensated on an hourly basis at the rates described in sub Section A5-B above for work performed; provided, that such compensation shall not exceed 60% of the fee that Bond Counsel would have received pursuant to sub Section A5-A, had it closed the issue; provided further, that Bond Counsel shall provide a time and activity report in a format acceptable to the City. The City will not compensate Bond Counsel for partial work on an Official Statement Services, as describe in Section A5-D.

C. Termination by Bond Counsel

Bond Counsel, if asked by the City to take action inconsistent with Bond Counsel's ethical obligations, shall inform the City in writing in detail of the reasons why it believes the City's request is inconsistent with Bond Counsel's ethical obligations. If the City does not withdraw its request for Bond Counsel to take that action, Bond Counsel may withdraw from representation of the City after allowing the City 60 days during which to employ other bond counsel services. In that event, all finished or unfinished documents, data, studies, and reports prepared by Bond Counsel shall, at the City's option, become the property of and be surrendered to the City. If this Agreement is terminated under this subsection, then for each debt issue that is closed after the termination date, Bond Counsel shall be compensated on an hourly basis at the rates described in sub section A5.B. above for work performed; provided, that such compensation shall not exceed 60% of the fee that Bond Counsel would have received pursuant to subsection A5-A., had it closed the issue; provided further, that Bond Counsel shall provide a time and activity report in a

format acceptable to the City. The City will not compensate Bond Counsel for partial work on an Official Statement in connection with Official Statement Services, as describe in Section A5-D.

14. FINAL CONSULTANT CONTRACT PAYMENTS REPORTING REQUIREMENTS.

Within 30 days after final payment has been made to Bond Counsel, Bond Counsel shall submit to the City a completed *Final Consultant Contract Payments Reporting Form*, listing the name of and dollar amount paid to each sub-contractor utilized by Bond Counsel under the terms of this Agreement, as well as the dollar amount paid to Bond Counsel. A sample of the form is attached to this Agreement as Exhibit __. Failure by Bond Counsel to submit the form as required may negatively impact the City's formal evaluation of Bond Counsel's overall performance on this Agreement.

15. BOND COUNSEL PERFORMANCE EVALUATION.

The Bond Counsel's performance will be evaluated by the City at the conclusion of the contract. The Evaluation template can be viewed <http://www.seattle.gov/contracting/docs/ccPE.doc>.

16. DEBARMENT.

Under SMC Chapter 20.70, the Director of City Purchasing and Contracting Services (CPCS), as hereby delegated by the Director of Finance and Administrative Services, may debar and prevent a Bond Counsel from contracting or subcontracting with the City for up to five years after determining the Bond Counsel:

- A. Received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City contracts;
- B. Failed to comply with City ordinances or contract terms, including but not limited to, ordinance or contract terms related to woman and minority business utilization, discrimination, equal benefits, or other state, local or federal non-discrimination laws;
- C. Abandoned, surrendered, or failed to complete or to perform work on or for a City contract;
- D. Failed to comply with contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards;
- E. Submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a contract;
- F. Colluded with another firm to restrain competition;
- G. Committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for the City or any other government entity;
- H. Failed to cooperate in a City debarment investigation.

The CPCS Director or designee may issue an Order of Debarment under the SMC 20.70.050. Rights and remedies of the City under these provisions are besides other rights and remedies provided by law or under the Agreement.

17. MISCELLANEOUS PROVISIONS.

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

- B. **Background Checks and Immigrant Status:** The City may require background checks for some or all of the employees that may perform work under this Agreement. The City reserves the right to require such background checks at any time. The City has strict policies regarding the use of such background checks, criminal checks and immigrant status for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/business/WithSeattle.htm>
- C. **Binding Agreement:** This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.
- D. **The Bond Counsel,** at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Seattle; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Bond Counsel shall comply with the requirements of this Section.
- E. **This Agreement shall be construed and interpreted under the laws of Washington.** The venue of any action brought shall be in the Superior Court of King County.
- F. **Remedies Cumulative:** Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
- G. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- H. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- I. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Bond Counsel after the time the same shall have become due nor payment to the Bond Counsel for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- J. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Bond Counsel. The Request for Proposal, Bond Counsel's Proposal, [and Bond Counsel's WMBE Inclusion Plan, if applicable], are each explicitly included as Attachments material to the Agreement. Where there are conflicts between these documents, the controlling document will first be this Agreement as amended, the WMBE Inclusion Plan as adopted, the Bond Counsel's Proposal, then the City Solicitation documents. If conflict occurs between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.
- K. **Negotiated Agreement:** The parties acknowledge this is a negotiated agreement, that they have had this Agreement reviewed by their respective legal counsel, and that the terms and

conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship.

- L. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.
- M. Paid Sick Time and Safe Time Ordinance: The Bond Counsel shall be aware that the City has a Paid Sick Time and Safe Time ordinance that requires companies to provide employees who work more than 240 hours within a year inside Seattle, with accrued paid sick and paid safe time for use when an employee or a family member needs time off from work due to illness or a critical safety issue. The ordinance applies to employers, regardless of where they are located, with more than four full-time equivalent employees. This is in addition and additive to benefits a worker receives under prevailing wages per WAC 296-127-014(4). City contract specialists may audit payroll records or interview workers as needed to ensure compliance to the ordinance. Please see <http://www.seattle.gov/laborstandards>, or you may call the Office of Labor Standards at 206-684-4500.
- N. Campaign Contributions (Initiative Measure No. 122): Elected officials and candidates are prohibited from accepting or soliciting campaign contributions from anyone having at least \$250,000 in contracts with the City in the last two years or who has paid at least \$5,000 in the last 12 months to lobby the City. Please contact Polly Grow at polly.grow@seattle.gov for more information about the measure, or call the Ethics Director with questions at 206-615-1248.

Part C
Signature Form

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

Additionally, Bond Counsel, being first duly sworn on oath, specifically agrees to the provisions of Sections A8, Social Equity Requirements of this Agreement, and certifies under the penalty of perjury under the laws of the State of Washington that the provisions of Section A8 of this Agreement are true and correct to the best of Bond Counsel’s knowledge and information.

THE CITY OF SEATTLE

By _____
Signature Date
Name

Title

By _____
Signature Date
Glen M. Lee
Director of Finance

City of Seattle Business License Number:

Washington State Unified Business Identifier Number (UBI):

Attachments:

- Exhibit A – The City's Request for Proposal
- Exhibit B – Bond Counsel’s Proposal
- Exhibit C – List of Existing Representations
- Exhibit D – Insurance Requirements
- Exhibit E - Final Consultant Contract Payments Reporting form
- Exhibit F - Inclusion Plan (if applicable)

Exhibit D



City of Seattle Bond Counsel Agreement

INSURANCE REQUIREMENTS TRANSMITTAL FORM

Contract: Bond Counsel Agreement **Contract Number:**
Contract Manager: Michael Van Dyck **Department:** FAS **Telephone:** 206-684-8347

This Insurance Requirements and Transmittal Form shall serve as an attachment and/or exhibit form to the Bond Counsel Agreement (“Contract”), and shall be interpreted and applied together as a single contractual instrument between the City of Seattle (“City”) and (“Bond Counsel”).

BOND COUNSEL: SEND THIS FORM TO YOUR INSURANCE PROFESSIONAL TO COMPLETE THE GREEN BOX AND TO ENSURE COMPLIANCE WITH ALL THE COVERAGE REQUIREMENTS, TERMS AND CONDITIONS REQUIRED BY THE CITY OF SEATTLE.

INSURANCE REPRESENTATIVE – ATTACH THIS FORM TO INSURANCE CERTIFICATION SUBMITTED TO THE CITY

• **COMPLETE THESE FIELDS SO THAT WE MAY CONTACT YOU IF NECESSARY. (REQUIRED)**

NAME: POSITION:
NAME OF COMPANY
EMAIL: TELEPHONE: FAX:

• **SEND ORIGINAL CERTIFICATION WITH COPY OF CGL ADDITIONAL INSURED ENDORSEMENT OR BLANKET ADDITIONAL INSURED POLICY WORDING TO:** THE CITY OF SEATTLE

ATTN: Michael Van Dyck
P.O. BOX 94669
SEATTLE, WA 98124-4669

In the “Certificate Holder” field of the certificate of insurance, write “Attention: City of Seattle.”

Upon award of the Contract, Bond Counsel shall maintain continuously throughout the entire term of the Contract, at no expense to the City, the following insurance coverage and limits of liability as checked below:

B. STANDARD INSURANCE COVERAGES AND LIMITS OF LIABILITY REQUIRED:

- Commercial General Liability (CGL)** or equivalent insurance including coverage for:
Premises/Operations, Products/Completed Operations, Personal/Advertising Injury, Contractual and Stop Gap/Employers Liability (coverage may be provided under a separate policy). Minimum limit of liability shall be
\$ 1,000,000 each occurrence Combined Single Limit bodily injury and property damage (“CSL”)
\$2,000,000 Products/Completed Operations Aggregate
\$2,000,000 General Aggregate
\$1,000,000 each accident/disease—policy limit/disease—each employee stop gap/Employer’s Liability
- Automobile Liability** insurance for owned, non-owned, leased or hired vehicles, as applicable, written on a form CA 00 01 or equivalent WITH **MINIMUM LIMITS OF LIABILITY OF \$1,000,000 CSL**.
 MSC-90 and CA 99 48 endorsements required unless In-transit Pollution coverage is covered under required Contractor’s Pollution Liability insurance.
- Worker’s Compensation** insurance for Washington State as required by Title 51 RCW.

C. ADDITIONAL COVERAGES AND/OR INCREASED LIMITS:

- Umbrella or Excess Liability** “follow form” insurance over primary CGL and Automobile Liability insurance limits, if necessary, to provide **total** minimum limits of liability of \$ _____ CSL. These required total minimum limits of liability may be satisfied with primary limits or any combination of primary and umbrella/excess limits.
 - Contractor’s Pollution Liability** insurance with minimum limits of liability of \$1,000,000 or \$ _____ CSL each claim.
 - Aviation Liability** insurance for bodily injury, death, property damage, contractual and passenger liability with minimum limits of \$1,000,000 or \$ _____ CSL each occurrence.
 - Watercraft/P&I Liability** insurance with minimum limits of \$1,000,000 or \$ _____ CSL each occurrence.
 - Federal Maritime** insurance with:
 - U.S.L.&H.** minimum limits \$1,000,000 or \$ _____ .
 - Jones Act** minimum limits \$1,000,000 or \$ _____ .
 - Professional Liability (E&O/Technical E&O)** insurance appropriate to the consultant’s profession. The minimum limit shall be \$1,000,000 or **\$5,000,000** each claim.
 - Crime Fidelity, Theft, Disappearance & Destruction Liability (to include Employee theft, wire transfer, forgery & mail coverage, and client coverage)** with minimum limit \$1,000,000 or \$ _____ per occurrence and in the aggregate. Coverage shall include ‘Joint Loss Payable’ ISO form CR 20 15 10/10 or equivalent; and “Provide Required Notice of Cancellation to Another Entity’ SIO form CR 20 17 10/10.
 - Technology Errors & Omission (E&O) Insurance** including but not limited to security and privacy liability with minimum limit of \$1,000,000 or \$ _____ each claim.
 - Information Technology –Cyber Liability (Network Security Liability and Privacy Liability)** with minimum limit \$1,000,000 or \$ _____ per occurrence and in the aggregate. Coverage shall include, but not be limited to, coverage for any actual or alleged breach of duty, neglect, error, act, mistake, omission, or failure arising out of Consultant’s Internet and Network Activities including coverage for, but not limited to, the following events: an attack that has the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access or unauthorized use of Consultant’s computer system; Computer Crime or Information Theft; Denial of Service; Extortion; Introduction, implantation, or spread of a Computer Virus; Loss of Service; Identity Theft; Infringement; Electronic data loss and restoration; Unauthorized Access or Use, including the gaining of access to Consultant’s computer systems by an unauthorized person or persons or an authorized person in an unauthorized manner. Coverage shall include notification and other expenses incurred in remedying a privacy breach and costs to investigate and restore data.
- C. CITY AS ADDITIONAL INSURED; PRODUCTS-COMPLETED OPERATIONS:** Bond Counsel shall include “the City of Seattle” as an additional insured to all of the insurance coverage listed and checked above in Sections A and/or Sections B; which must also be as primary and non-contributory with any insurance or self-insurance coverage or limits of liability maintained by the City, and in the form of a duly issued additional insured endorsement and attached to the policy or by the appropriate blanket additional insured policy wording, and in any other manner further required by Bond Counsel’s insurance coverage to provide the City of Seattle additional insured coverage as set forth herein.
- D. NO LIMITATION OF LIABILITY:** Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only. Nothing in the City of Seattle’s requirements for minimum insurance coverage shall be interpreted to limit or release liability of Bond Counsel or any of Bond Counsel’s insurers. The City shall be an additional insured as required in paragraph C. regarding the total limits of liability maintained, whether such limits are primary, excess, contingent or otherwise.
- E. REQUIRED SEPARATION OF INSURED PROVISION; CROSS-LIABILITY EXCLUSION AND OTHER ENDORSEMENTS PROHIBITED:** Bond Counsel’s insurance policy shall include a “separation of insureds” or “severability” clause

that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Bond Counsel's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under Bond Counsel's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Bond Counsel's CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Bond Counsel's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Contract with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Bond Counsel or reduced and/or offset against the Contract.

- F. SUBSTITUTION OF SUBCONSULTANT'S INSURANCE:** If portions of the scope of work are subcontracted, the subconsultant or subcontractor may provide the evidence of insurance for the subcontracted body of work provided all the requirements specified in this Insurance Transmittal Form are satisfied.
- G. NOTICE OF CANCELLATION:** The above checked insurance coverages shall not be canceled by Bond Counsel or Insurer without at least forty-five (45) days written notice to the City, except ten (10) days' notice for non-payment of premium.
- H. CLAIMS MADE FORM:** If any insurance policy is issued on a "claims made" basis, the retroactive date shall be prior to or coincident with the effective date of the Contract. Bond Counsel shall either maintain "claims made" forms coverage for the life of the bonds issued with a written opinion of Bond Counsel under the Contract following the expiration or earlier termination of the Contract, providing the City with a Renewal Certificate of Insurance annually; purchase an extended reporting period ("tail") for the same period; or execute another form of guarantee acceptable to the City to assure Bond Counsel's financial responsibility for liability for services performed for the same period.
- I. INSURER'S A.M. BEST'S RATING:** Each insurance policy shall be issued by an insurer rated A-: VII or higher in the A.M. Best's Key Rating Guide, unless a surplus lines placement by an licensed Washington State surplus lines broker, or as may otherwise be approved by the City.
- J. SELF-INSURANCE:** The City acknowledges that Bond Counsel may employ self-insured and/or alternative risk financing and/or capital market risk financing programs for some or all of its coverages. The term "insurance" wherever used herein shall include any such self-insured and/or alternative risk financing and/or capital market risk financing programs. Bond Counsel shall be liable for any self-insured retention or deductible portion of any claim for which insurance is required. Deductibles or self-insured retentions in excess of \$_____ must be disclosed and are subject to approval by the City's Director of Risk Management.
- K. EVIDENCE OF INSURANCE (NOT APPLICABLE TO WASHINGTON STATE WORKERS COMPENSATION):** Consultant must provide the following list of evidence of insurance:
- a) A certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein;
 - b) An attached City of Seattle designated additional insured endorsement or blanket additional insured wording to the CGL/MGL or other additional insurances required (and if required Consultant's Pollution Liability insurance policy).

- c) A copy of all other amendatory policy endorsements or exclusions of Consultant's insurance CGL/MGL policy that evidences the coverage required.

At any time upon the City's request, Consultant shall also cause to be timely furnished a copy of declarations pages and schedules of forms and endorsements. In the event that the City tenders a claim or lawsuit for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, Consultant shall also cause a complete and certified copy of the requested policy to be timely furnished to the City of Seattle.

NOTE: CERTIFICATES WITHOUT ATTACHED ADDITIONAL INSURED ENDORSEMENT OR BLANKET ADDITIONAL INSURED WORDING COVERAGE FOR THE CITY OF SEATTLE WILL NOT BE APPROVED!

Exhibit E
City of Seattle
Department of Executive Administration– Contracting Services Division

Final Consultant Contract Payments Reporting Form
(to be completed within 30 days after final payment has been made to Bond Counsel)

Contract Title	Contract #:
Consultant's Business Name	Phone Number
List the Business Name of <u>all</u> Sub-consultants	Dollar Amount Paid
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
Net Amount Paid to Bond Counsel (Total amount paid to Bond Counsel minus the amount paid to sub-consultants)	\$

<p>_____</p> <p>Signature Name Title Date</p>	<p>_____</p>
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Instructions: Within 30 days after final payment to Bond Counsel, Bond Counsel should fill in the information requested above, indicating the dollar amount of work that was paid to each sub-consultant on this contract, and the net amount paid to Bond Counsel (total amount paid to Bond Counsel minus the amount paid to sub-consultants). If additional space is needed, please photocopy this form.

Return of Completed Form: Please return the completed form within 30 days of final payment to Bond Counsel by one of the following methods:

- **FAX** the form to: (206) 684-4511, Attention: Contracting Manager
- **MAIL** the form to:

City of Seattle
Contracting Services Division
700 5th Avenue, Suite 4112
P.O. Box 94687
Seattle, WA 98124-4687

Questions: If you have any questions about this form, please call (206) 684-0386.

**Exhibit F (if applicable)
City of Seattle
WMBE Inclusion Plan**

Contract Title	Bond Counsel Agreement
Proposer's Name	
Date	

1. Aspirational WMBE Goals

If Bond Counsel intends to subcontract any of the work, the City must see evidence of Bond Counsel's strong aspirational intent to include women and minority business (WMBE) as part of any available subcontracting opportunities. In the box below, state the WMBE goals you intend to achieve for this agreement. While the goals are aspirational, good faith efforts to achieve goals will become a material part of the agreement. A contract amendment may require revisiting this WMBE Inclusion Plan to consider changes that may affect WMBE utilization. WMBE primes can include self-performance in goals below.

Estimated percentage of the total contract value to Women Owned firms	%
Estimated percentage of the total contract value to Minority Owned firms	%

2. Scope of Work. Identify WMBE firms you selected who agreed to perform work under the agreement and briefly describe the scope of work they will participate in. All WMBE firms named are to be aware of their role and anticipated compensation. Reasons for a Prime to replace the WMBE firms and their intended share of work is restricted by a list of acceptable reasons and City approval (see instructions). The City will preserve WMBE utilization in these WMBE firms to the extent practicable.

Name of WMBE Firm	Identify as Women (W) or Minority (M)	Minimum value to this WMBE firm out of the total spend	Describe tasks and which project phase each task is within	If WMBE firm utilization depends upon a particular resume, list those individuals below	Signature of WMBE Firm
		%			
		%			
		%			
		%			
Aspirational Goal (page 1)		% TOTAL			

WMBE Signature: Please have the proposed WMBE sign the Inclusion Plan or you can simply attach an email to evidence their concurrence. This ensures WMBE firms understand (1) they are listed on your plan, (2) whether they are in core or non-core work; (3) whether an individual is critical to their participation; and (4) they are aware of risks that scope changes may be made during the agreement that may impact their participation. A WMBE shall self-register at:

<http://www.seattle.gov/html/business/contracting.htm>

Inclusion Strategies

Please answer each of the following.

- A. Describe the partnership you have with the WMBE firms on your team, whether you teamed in the past, how substantive their role is, and whether they are decision-makers and leaders on your team.
- B. Describe strategies you use to assure consideration of WMBE firms for team assignments not yet made or that result from contract or team changes.
- C. A City objective is to strengthen WMBE firm's capabilities and experience, making them increasingly competitive. Describe specific strategies your team will employ to achieve this goal.

Past Performance

Please identify up to 3 projects of a similar nature as this agreement and for each, list the percentages of utilization of WMBE firms based on total value of the contract.

INSTRUCTIONS

Complete and submit this WMBE Inclusion Plan with your Proposal. The Plan must reflect responsible good faith efforts for successful inclusion of WMBE firms. The City may clarify or request information during evaluation. The City may negotiate with the highest ranked Consultant to improve the Plan or accommodate changes necessary to meet City business needs. The agreed-upon Plan becomes material to the contract. Thereafter, changes require City approval as described below.

Modifications

The City Project Manager and Bond Counsel will consider changes to scope or teams made during the negotiations before contract execution, and also any amendments made during the contract performance. Whenever there is an amendment, changes to goals or WMBE firm utilization must be approved by the City and should meet one of the following reasons. If replacement of a WMBE firm is approved by the City Project Manager, Bond Counsel must use good faith efforts to recruit another WMBE. Any changes to the Inclusion Plan will be incorporated in a written amendment.

- City negotiates and/or must remove, the scope of work from the contract
- Named Expert for the WMBE firm withdraws and a replacement expert is unavailable or unapproved
- Failure of Subconsultant to execute a written contract after a reasonable period of time
- Bankruptcy of Subconsultant
- Subconsultant cannot perform the work because they are debarred, not properly licensed, or in some other way is ineligible to work.
- Failure of Subconsultant to comply with a requirement of law applicable to subcontracting

- Death or disability of Subconsultant (if Subconsultant is an individual)
- Dissolution (if a corporation or partnership)
- Failure to perform under previous contracts
- Failure or refusal to perform the work
- For other causes when approved by the City

Reporting and Performance

1. The City will expect regularly reporting, as specified in the agreement, to ensure compliance to the plan.
2. The City will evaluate Bond Counsel's performance at project close-out in accordance with the agreement. To maintain a positive rating, Bond Counsel should demonstrate:
 - a. Substantial attainment of the aspirational goal. Failure to substantially attain the goal may evidence a failure in good faith to develop or pursue the goal that was submitted to the City as reasonable;
 - b. Timely and accurate reporting;
 - c. Guaranteed payment to sub consultants in accordance to contract provisions;
 - d. Few or well-managed disputes;
 - e. Robust utilization and meaningful partnership with WMBE firms on your team.