

# RFP FOR BOND COUNSEL SERVICES

Date Issued: November 7, 2016

## SECTION 1: GENERAL INFORMATION

**1-1 DEFINITIONS** For the purpose of this Request for Proposals, "respondent" shall mean partnerships, corporations, firms, or other persons submitting a response to this Request for Proposals.

**1-2 PURPOSE** The City of Leawood, Kansas (City) is seeking proposals from independent, responsible and qualified law firms interested in serving as the City's bond counsel to provide a full range of quality bond counsel services to the City, including but not limited to providing legal advice and all services customarily and usually performed by bond counsel for future bond activities; as well as providing legal advice, document preparation and document review on complex economic development matters. A detailed scope of services is included herein.

**1-3 PROPOSAL SUBMISSION AND WITHDRAWAL** The City will receive all proposals at the following address:

CITY OF LEAWOOD  
Attn: Finance Director  
4800 Town Center Drive  
Leawood, Kansas 66211

All responses to this RFP must be in sealed, opaque envelopes and marked: "**BOND COUNSEL SERVICES PROPOSAL**". The envelope shall also include the respondent's name and return address. The envelope shall include the information required in the proposal including the fee information.

Respondents shall submit five (5) copies of the proposal in the envelope in addition to an electronic copy on a CD or flash drive. A respondent may only submit the proposal by personal delivery or by mail.

**THE CITY MUST RECEIVE ALL PROPOSALS BY 10:00 A.M. (CDT) ON TUESDAY, DECEMBER 6, 2016.**

Any proposal received by the City after the established deadline will be returned unopened to the respondent. Proposals must be submitted in accordance with the instructions and requirements contained in this RFP. Failure to do so may result in the proposal being considered non-responsive and it may be rejected by the City. The City reserves the right to accept any proposal and/or reject any or all proposals. The City may, in its discretion, waive any informalities and irregularities contained in a proposal

or in the manner of its submittal and award a contract thereafter. The City further reserves the right to negotiate any and all terms of the proposal, including but not limited to fees.

Respondents may withdraw their proposals by notifying the Finance Director in writing at any time prior to the deadline for proposal submittal. After the deadline, proposals, become a record of the City and will not be returned to the respondents. Upon opening, proposals are subject to public disclosure in accordance with Kansas law. Respondents must invoke the exemptions to disclosure provided by law in the response to the RFP, and must identify the data or other materials to be protected, state the reasons why such exclusion from public disclosure is necessary and provide the legal basis for exemption.

**1-4 ELIGIBILITY** To qualify as the City's contracted bond counsel, the following minimum requirements must be met:

- A. A law firm submitting a proposal ["Firm"] must be an established legal entity, licensed and authorized to do business in the State of Kansas and all partners and associates providing service to the City must be licensed to practice law in Kansas.
- B. All partners and associates providing service to the City must be listed as a practicing municipal bond lawyer in the Bond Buyer's *Municipal Marketplace* (a/k/a the "Red Book").
- C. All partners and associates assigned to this engagement must be thoroughly familiar with all aspects of bond financing. Preference will be given to those Firms who can demonstrate at least five (5) years of successful bond financing experience in Kansas.
- D. Must be knowledgeable about local political, economic, legal and other factors that may affect the borrowing of the City.
- E. Neither selected bond counsel, nor his/her firm, shall act as counsel in any litigation, administrative proceeding or other proceeding in which the City is named as an adverse party or in which bond counsel or the Firm, takes an adverse position to the City.

**1-5 CONTRACT AWARDS** The City anticipates entering into a contract with the one respondent it deems submits the most advantageous proposal but reserves the right to award more than one contract if in the City's best interest. The City anticipates issuing a contract for a five (5) year term with an option for the City to extend the contract for up to two (2) additional one (1) year periods; however, the term of the Agreement is not guaranteed and is subject to annual renewal and may be terminated as provided in the contract. It is further understood that although the successful respondent for which the City enters into a contract shall receive the majority of the

City's bond counsel work, such services shall not be exclusive and the City is not prohibited from utilizing other bond counsel from time to time as the City determines is in the City's best interest.

The respondent understands that this RFP does not constitute an offer or a contract with the respondent. An official contract or agreement is not binding until proposals are reviewed and accepted by the Selection Committee, approved by the appropriate level of authority within the City and executed by the parties.

**1-6 PROPOSAL COSTS** Neither the City nor its representatives shall be liable for any expenses incurred in connection with preparation of a response to this RFP. Respondents should prepare their proposals simply and economically, providing a straightforward and concise description of the respondent's ability to meet the requirements of the RFP.

**1-7 INQUIRIES AND OTHER COMMUNICATION**

Questions about this RFP must be submitted in writing to City Finance Director Dawn Long by email to [dawnl@leawood.org](mailto:dawnl@leawood.org) or by fax to (913) 339-6781. **All questions must be submitted no later than 9:00 A.M. (CDT) on November 23, 2016.** Responses to submitted questions will be made available to all prospective respondents by addendum to this RFP. The City will **issue any addendum no later than November 30, 2016.**

All persons wishing to receive addenda must complete the Acknowledgement of RFP Documents Form attached hereto as Exhibit A and return it to City Finance Director Dawn Long by email to [dawnl@leawood.org](mailto:dawnl@leawood.org) or by fax to (913) 339-6781 on or before **November 16, 2016.**

To avoid inconsistencies and confusion, all communication related to this RFP process are requested to be directed to the City Finance Director. Contact with other City personnel outside the City Finance Director regarding this RFP may be grounds for elimination from the selection process.

## 1-8 ANTICIPATED SCHEDULE

RFP Issued	11/07/2016
Notice of RFP published in Legal Record	11/08/2016
Submission of Acknowledgement	11/16/2016
Deadline for Questions	11/23/2016 @ 9:00 AM
Deadline for Issuing Addenda	11/30/2016
RFP Responses Due	12/06/2016 @ 10:00 AM
RFP Evaluation by Selection Committee	12/07-09/2016
RFP Interviews (if necessary)	12/19/2016
Select Successful Respondent & Finalize Contract	12/19-31/2016
Take Contract to Governing Body for Approval	01/16/2017

\*Note: dates subsequent to the date RFP Responses are due may be adjusted by the City without further notice.

**1-9 INSURANCE** Respondent, if awarded a contract, shall maintain insurance coverage reflecting the minimum amounts throughout the duration of the Agreement unless otherwise provided herein. In the event the respondent is a self-insured organization, different insurance requirements may apply. Certificates of insurance meeting the required provisions specified within a subsequent contract ("Contract") shall be forwarded to the City Finance Director and approved prior to the start of any work. Prior to any material change or cancellation, thirty (30) days prior written notice by Certified Mail, Return Receipt Requested must be given to the City Finance Director. Misrepresentation of any material fact, whether intentional or not, regarding the respondent's insurance coverage, policies, or capabilities may be grounds for rejection of the proposal and rescission of any awarded contract.

**Professional Liability Insurance** shall be procured and maintained by respondent for the duration of this Agreement, plus one (1) year after completion of any project resulting from services provided under the Contract. This insurance shall provide coverage against such liability resulting from the Contract, including legal malpractice insurance. The minimum limits of coverage shall be \$2,000,000 with a deductible not to exceed \$25,000. The deductible will be the responsibility of the insured.

**Commercial General Liability Insurance** coverage in the amount of \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Minimum \$2,000,000 aggregate.

**Business Automobile Liability Insurance** in the amount of \$500,000 per occurrence, combined single limit for bodily injury, personal injury and property damage.

**Workers Compensation Insurance** in the minimum statutory limits.

**1-10 INDEMNIFICATION/HOLD HARMLESS AGREEMENT** Respondent shall, in addition to any other obligation to indemnify the City of Leawood and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City of Leawood, their agents, elected officials and employees from and against all claims, actions, liabilities, and costs arising out of any claims to have resulted in whole or in part from any act or omission of the respondent, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable in the performance of the work. Any cost or expenses, including attorney's fees, incurred by the City of Leawood to enforce the subsequent contract shall be borne by the respondent.

**1-11 NO COLLUSION** By offering a submission to this RFP, the respondent certifies that respondent has not divulged to, discussed or compared his/her competitive proposal with other respondents and has not colluded with any other respondents or parties. Any prices and/or cost data submitted have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition.

**1-12 APPROPRIATION CLAUSE** The City, as an entity of government, is subject to the appropriation of funds by its legislative body in an amount sufficient to allow continuation of its performance in accordance with the terms and conditions of the contract for each and every fiscal year following the fiscal year in which the contract is executed and entered into and for which the contract shall remain in effect. The City shall, upon receipt of notice that sufficient funds are not available to continue its full and faithful performance of the contract, provide prompt written notice to the respondent of such event and effective thirty (30) days after giving such notice or upon the expiration of the period of time for which funds were appropriated, whichever comes first, be thereafter released of all further obligations in any way related to the contract.

**1-13 CITY BACKGROUND**

The City of Leawood covers 14.7 square miles and has a population of 32,644. The City operates under a non-partisan Mayor-Council form of government with the addition of a City Administrator. The Mayor and eight Council Members serve four-year terms. The City Administrator is appointed by the Mayor and City Council as the Chief Administrative Officer of the City and is charged with the efficient and effective administration of the City.

The City provides a variety of services including police and fire protection; the construction and maintenance of highways, streets, and other infrastructure; and recreational and cultural activities. More detailed information regarding the City is available on the City website at [www.leawood.org](http://www.leawood.org).

Regular City Council meetings are scheduled for the first and third Monday of the month commencing at 7:30 p.m.

City revenues in 2015 for the general fund and debt service fund totaled \$48,439,561. At December 31, 2015, the City had a number of debt issues outstanding. These issues include \$52,805,000 of general obligation bonds and special assessment debt backed by the full faith and credit of the City. As of December 31, 2015, the total general obligation debt of \$54,786,029 was well below the City's legal limit of \$258,550,246.

The City's most recent bond rating for general obligation bond issues is:

Moody's..... Aaa

Currently, the City has five (5) active Transportation Development (TDD) Districts and one (1) Community Improvement District. At December 31, 2015 there was a remaining balance due on the TDD bonds issued in the amount of \$2,785,000. The City is in no way liable for repayment of these bonds, but is only acting as agent for the property owners in collecting the assessments, forwarding the collections to bondholders, and initiating foreclosure proceedings. Accordingly, collection and repayment activity associated with these debt issuances is reported in agency funds. No debt was issued for the CID district. Payments to the developer are on a pay as you go basis as the additional sales tax is collected.

## SECTION 2: STATEMENT OF WORK

**2-1 SCOPE OF WORK** The law firm retained to perform legal and bond counsel services shall work with the City Attorney, City Administrator, City Finance Director, other City staff and the City's Financial Advisor in advising the City and the City Council regarding municipal finance matters. The City's current Financial Advisor is George K. Baum & Company. The scope of work will include those services customarily attendant to bond financing including, but not limited to:

1. Provide ongoing legal advice and assistance, document drafting and review, and analysis with respect to state and federal laws, rules and regulations governing various methods for financing improvements in the City, with specific attention to proposed or ongoing City projects.
2. Prepare or review and process various financing documents necessary and appropriate for the authorization, sale and closing of bonds or other obligations, including but not limited to bond ordinances or resolutions, bond forms, project authorizations, special assessment proceedings, notices, affidavits, certificates, the record of proceedings, the closing statement and closing transcript.
3. Prepare legal opinions with respect to compliance with applicable federal and state laws governing the issuance of the City's obligations.
4. Prepare or assist in the preparation of any preliminary or final official statements, private placement memorandums, or other offering documents describing the City and its obligations (except with respect to conduit debt) and provide advice concerning compliance with all disclosure requirements applicable to the City under federal laws regulating the sale of municipal securities.

5. Provide ongoing legal advice to the City with respect to compliance with provisions of federal law requiring the rebate of certain arbitrage profits, including assistance in helping the City structure its financing so as to avoid the payment of such rebate.
6. Provide assistance in reviewing special benefit district applications and determining the structure and establishment of the same.
7. Provide assistance with and/or perform procedural steps to issue the City's obligations including required publications, public hearings, filings, governmental approvals, CUSIP applications and other legal matters, both state and federal.
8. With reasonable notice, attend all meetings of the City Council or the City staff which the Mayor, Council or City staff deem necessary.
9. Provide ongoing legal advice, document preparation or review and other assistance which may be reasonably requested by City officials and staff, including but not limited to the City Attorney and City Finance Director relating to economic development issues and City financing mechanisms.
10. Work with the City Attorney to provide drafting assistance and review when requested. The majority of economic development projects are done on a reimbursement "pay-as-you-go" basis, but assistance may be requested for such projects in which no bonds are issued.
11. Review legal issues relating to the structure of a bond issue.
12. Prepare the appropriate bond, note or other forms and arrange for the printing and appropriate delivery of such obligations.
13. Prepare or assist in preparing any necessary applications to rating agencies, bond insurers, surety bond issuers or other bond participants and assist the City in all communications and consultations with rating agencies, bond insurers and underwriters in order to protect the best interests of the City.
14. Give oral and written legal opinions appropriate to each particular financing which address the question of whether interest on such obligations is exempt from state and federal income tax, the validity and binding effect of such obligations, compliance with federal securities law, if necessary, and other legal issues as are typically addressed by a bond counsel opinion issued in connection with such obligations.
15. Attend the sale, closing and any other meeting necessary to the issuance of the bonds and other obligations, and prepare the closing instructions.
16. Prepare and deliver the transcript of proceedings for the authorization and issuance of the Bonds and provide such other services as may reasonably be requested by the City in connection with the issuance of its obligations.
17. Provide ongoing legal advice, negotiation and document drafting on conduit issues on various matters arising after closing of an issue such as assignment; redemption, etc.

18. Preparation of documents to be filed with the State of Kansas on all bond matters including, but not limited to, all filings with the Kansas Board of Tax Appeals necessary to obtain and maintain property tax exemptions for IRB financed property; and applications to obtain sales tax exemption certificates for construction of projects financed with industrial revenue bonds.
19. Preparation of documents to be filed to comply with any Securities and Exchange Commission rules and regulations.
20. Work with the City's Finance Director and financial advisor in the development of a coordinated approach for the overall requirements of the financing program, including reviewing the City's CIP for an analysis on projects that may be eligible for bond financing.
21. Provide ongoing assistance with regard to legislative activities of the City, including the drafting, review, analysis and providing testimony of pending or proposed legislation affecting municipal debt obligations and other economic development tools, including where necessary, enabling legislation, and keep the City and staff continually informed of relevant developments in the municipal financing environment.
22. Provide legal advice as to acceptance or rejection of the bids to purchase the bonds received at public sale, or the bond purchase agreement received from the investment banker through a negotiated sale.
23. Advise the City on proposed and actual changes in state or federal tax laws and financial market developments that could affect the City's bond financing plans.
24. Other services as reasonably requested by the City.

Collectively referred to as "Services" or "Scope of Work".

## SECTION 3: INSTRUCTIONS FOR PREPARING PROPOSALS

**3-1 PROPOSAL FORMAT** Respondents shall prepare their proposals using the following format:

- A. Letter of Transmittal** - The letter should summarize in a brief and concise manner, the respondent's understanding of the Scope of Work and make a positive commitment to timely perform the work. The letter must name all of the persons authorized to make representations for the respondent, including the titles, addresses, and telephone numbers of such persons. An authorized agent of the respondent must sign the Letter of Transmittal indicating the agent's title or authority.
- B. Statement of Addendum** - Statement acknowledging receipt of each addendum issued by the City.
- C. Qualifications and Experience**
1. Provide a general description of the Firm, its organization, size and structure. Describe in general your Firm's national, statewide and local service capabilities, and with more specificity, the Firm's municipal finance experience as bond counsel for Kansas local governments.
  2. Provide a description of the general capabilities of your Firm including information relating to total size and staffing, research capability, professional staff and clerical. Identify the attorney who will be primarily responsible for the City's service (the "Primary Attorney") and specify that attorney's office location and a listing of other attorneys and staff who will participate in the day-to-day provision of services to the City. Please provide a brief professional resume for each attorney that would be participating in service to the City. Describe the anticipated division of duties among partners, associates and paralegals. If additional lawyers with your Firm may be available for consultation, even though they are not assigned to work with the City, identify them and their specialized expertise.
  3. If your Firm intends to use the services of any other law firms or attorneys (whether as Co-Bond Counsel or Special Counsel or otherwise), then you must submit the above information for each and every such law firm or attorney, as applicable, with and as a part of your firm's proposal, clearly identifying the role.
  4. Describe your philosophy and practice in working with multiple City departments/staff and how you view the division of responsibility and work on a variety of municipal finance operations.
  5. Identify the Firm's engagements in Kansas in connection with tax-exempt and taxable financing within the last five years. A response to this section should include information which is representative of the type of bonds and variety of bond issues in which your firm has been involved. Please include information as

to whether litigation has resulted arising out of such representation and provide details. When providing an answer to the questions contained in this section please include the following information:

- (a) Purpose of the issue (public improvement, industrial development, etc.);
  - (b) Type of issue (general obligation, revenue, etc.);
  - (c) Size of issue and term of bonds;
  - (d) Governmental unit issuing bonds.
6. Of the jurisdictions listed in paragraph 5, list the jurisdictions that the Primary Attorney identified in this response acted as the Primary Attorney.
  7. Indicate your Firm's experience in tax matters relating to compliance with the Internal Revenue Code Regulations and Rulings regarding arbitrage considerations in tax exempt financing. Also, please describe your Firm's tax capability and experience in handling complex tax questions and opinions, including a listing and profile of all attorneys with your Firm who have experience in complex tax matters pertaining to bond transactions.
  8. A listing of local government jurisdictions for which the Firm currently performs professional legal services, including the type of services provided and the length of time the Firm has represented that client.
  9. Identify at least three (3) Kansas governmental clients the City can contact as references with respect to your Firm's work performance. For each reference include name, title, address, and phone number. Also indicate your role with this agency, whether as bond counsel, underwriter's counsel, special counsel or other role.
  10. Provide a statement of the Firm's local availability and degree of accessibility to the City.
  11. Discuss your Firm's views as to the relative roles and responsibilities of bond counsel and issuer's counsel.
  12. If you note unique, complex or challenging issues in connection with the "Scope of Work" contained in this RFP, identify the issue(s) and indicate how the experience and expertise of your Firm will be utilized to complete the necessary legal work.
  13. Describe any circumstance in the last 10 years in which the validity of any bonds or other obligations on which your Firm has given an approving legal opinion has been subject to any court action or action by any state or federal regulatory agency. If such instances exist, please provide a detailed description of the nature and outcome of each.
  14. State any other qualifications, experience or bond financing which you would consider to be significant, innovative or otherwise relevant to the City's consideration of your Firm.
  15. Indicate current and anticipated workloads and availability for other activities.

16. Provide any other information (in as brief a format as possible) which you believe is relevant to the City's consideration of your proposal.

**D. Conflict of Interest** Provide an affirmative statement that retaining your Firm as bond counsel to the City will not result in any conflict of interest or potential conflict with the City or others potentially affected in the City's financing. Indicate (i) if your Firm represents, has represented in the past three years, or expect to continue representation of firms or banks which may underwrite or purchase the City's bonds or notes and if so, the nature, frequency and extent of such representation, (ii) if your Firm is engaged in representing or has in the past three years represented real estate developers, business interests or other parties who may appear before the Governing Body in connection with matters regulated or controlled by the City; and (iii) if your Firm is engaged in representing or has represented in the past three years banks acting as trustees on bond issues of the type the City regularly issues. If any conflict or potential conflict exists, your Firm should specify the party with which such conflict may exist, the nature of the potential conflict and any proposed resolution of such conflict. If in the past ten years your Firm has represented any party in litigation against the City please identify the litigation by caption and case number and describe the action.

**E. Contract** A Sample Standard Contract is attached as Exhibit B to this RFP. The City anticipates that the final contract will be in substantial conformance with the Sample Standard Contract; nevertheless, respondents are advised that any contract which may result from the RFP may deviate from the Sample Standard Contract. If respondent requires any amendments to the Sample Standard Contract, or the provisions of this RFP, including but not limited to the insurance and indemnification provisions, please include in your proposal the objectionable provisions and your proposed alternative language/provisions.

**F. Fees and Expenses**

1. Provide your Firm's fee proposal for:
  - a. General Obligation bonds
  - b. Leases and Certificates of Participation
  - c. Temporary Notes
  - d. Special Benefit District Financing
  - e. Transportation Development District Financing
  - f. Community Improvement District Financing
2. Consulting services, such as those described in Section 2-1 "Scope of Work" may be requested in situations that do not involve a debt issue. These services may be complex and involve such things as consulting on a project the City is considering undertaking, or it may be a short, relatively simple request for information or legal opinion on a specific item. Please specify whether or not you intend to bill for such services and if so, provide a proposed billing procedure (such as hourly billing rates; monthly lump sum fees; or other method for billing).

3. Indicate your Firm's policy regarding out-of-pocket and or indirect cost expenses; if your Firm proposes reimbursement from the City, please itemize the types of expense, any multiplier that is added, and manner of billing for each.
4. The Fee Schedule provided should address fees over the first three (3) years of the Agreement.
5. Include a statement why the Firm's approach to fees would be most cost effective to the City.
6. Any additional information which the respondent considers pertinent for consideration should be included in a separate section of the proposal.

#### **SECTION 4: EVALUATION OF PROPOSALS**

**4-1 EVALUATION METHOD AND CRITERIA** The City will evaluate proposals and will select the respondent which the City believes meets its best interests. The City's decisions will be final.

The proposals will first be considered by a Selection Committee. The Committee will evaluate and rate each proposal utilizing a number of criteria, including but not limited to:

- a. The ability of respondent to provide all the services requested in a comprehensive and timely fashion.
- b. The experience, background and availability of the Primary Attorney and his or her prior experience, including with the City, if any. The experience and availability of support staff for such attorney.
- c. The experience and reputation of respondent and quality of references.
- d. The nature and quality of the expertise respondent possesses in legal matters separate from but related to municipal finance.
- e. Quality of similar work that has been provided for other public and private entities, particularly in Kansas.
- f. The fees and compensation proposed to be charged.
- g. Overall responsiveness and quality of the proposal.

Cost will not be the primary factor in the selection of the City's Bond Counsel. The Selection Committee may, at its discretion, request any one or more of the firms to participate in oral interviews if the Selection Committee believes it would be helpful to a decision. Not all firms may be asked to participate in interviews.

Based upon the response to this RFP, any additional required submittals, interview(s), if any, and proposed cost, the Selection Committee will select and recommend to the City Council for approval the firm to provide the bond council services set out in this RFP.

Staff will endeavor to negotiate a contract with the successful firm. The City reserves the right to negotiate any and all elements of this proposal, including but not limited to, the fee structure and length of contract term with the firm selected as bond counsel. In the event a mutually agreeable contract cannot be negotiated, staff may enter into negotiations with the next highest rated firm.

**Exhibit A to RFP for Bond Counsel Services**

**ACKNOWLEDGEMENT OF RFP DOCUMENTS**

I hereby acknowledge receipt of the RFP for Bond Counsel Services issued by the City of Leawood, Kansas on November 7, 2016. By submitting this Acknowledgement I am requesting the City notify me of any addenda that may be issued as part of this RFP.

Print or Type the Following Information:

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Contact Person for this RFP: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Do you intend to submit a proposal in response to this RFP?

YES \_\_\_\_\_ NO \_\_\_\_\_ UNSURE \_\_\_\_\_

Please return this form by email or fax as soon as possible, but no later than November 16, 2016 to:

**Dawn Long, Finance Director**

**Email: [dawnl@leawood.org](mailto:dawnl@leawood.org)**

**FAX: (913) 339-6781**

Exhibit B to RFP for Bond Counsel Services

## **SAMPLE STANDARD CONTRACT**

### **AGREEMENT FOR BOND COUNSEL SERVICES**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of January, 2017, by and between the City of Leawood, a municipal corporation of the State of Kansas, hereinafter referred to as CITY, and \_\_\_\_\_ hereinafter referred to as CONSULTANT:

WHEREAS, the CITY requires certain professional services in connection with Bond Counsel Services; and,

WHEREAS, the CITY issued a Request for Proposals dated November 7, 2016 ("RFP") describing the anticipated Scope of Work; and

WHEREAS, the CONSULTANT submitted a Proposal dated December 6, 2016 in response to the City's RFP; and

WHEREAS, the CONSULTANT represents that it is capable and prepared to provide such Services:

NOW THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

#### **ARTICLE 1 - TERM**

The term of this Agreement shall commence January 1, 2017 and extend through December 31, 2019, unless otherwise terminated as provided in this Agreement. Upon expiration of this term, the Agreement may be extended for up to two (2) additional one (1) year periods by Addendum executed by the CONSULTANT and the City Administrator.

#### **ARTICLE 2 - SERVICE TO BE PERFORMED BY CONSULTANT**

The CONSULTANT shall perform the services as specifically stated in the Scope of Work ("Services") contained in the RFP for Bond Counsel Services dated November 7, 2016, attached hereto as Attachment A and incorporated herein by reference, and as may be specifically designated and additionally authorized by the CITY.

Although the CITY intends to primarily utilize the services of CONSULTANT during the term of this Contract, this Contract is not exclusive and the CITY reserves the right, at its sole discretion, to consult with or retain other bond counsel or attorney representation during the term of this Contract.

### **ARTICLE 3 - COMPENSATION**

The CITY shall pay CONSULTANT in accordance with Attachment B, Fee Schedule, which is attached hereto and incorporated herein by reference.

### **ARTICLE 4 - STANDARD OF CARE**

CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a professional bond counsel lawyer under similar circumstances and CONSULTANT shall, at no additional cost to the CITY, re-perform services which fail to satisfy the foregoing standard of care.

### **ARTICLE 5 - INDEMNIFICATION**

CONSULTANT shall, in addition to any other obligation to indemnify the CITY and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the CITY, their agents, elected officials and employees from and against all claims, actions, liabilities, and costs arising out of any claims alleged to have arisen in whole or in part from any act or omission of CONSULTANT, any sub consultant, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable in the performance of the WORK. Any cost or expenses, including attorney's fees, incurred by the CITY to enforce this Agreement shall be borne by the CONSULTANT.

Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reasons, the terms and conditions of this Article shall survive indefinitely.

### **ARTICLE 6 - INDEPENDENT CONTRACTOR**

CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance. CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

### **ARTICLE 7 - COMPLIANCE WITH LAWS**

In performance of the Services, CONSULTANT will comply with applicable regulatory requirements including federal, state, and local laws, rules regulations, orders, codes, criteria and standards.

### **ARTICLE 8 - INSURANCE**

During the performance of the Services under this Agreement, and with respect to professional liability insurance, for one (1) year after completion of any project resulting from the Services provided under this Agreement, CONSULTANT shall maintain the following insurance policies, and provide the CITY with certificates of insurance confirming the required protection on standard Acord forms prior to commencing work under this Agreement. The CITY shall be provided written notice at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificates.

The insurance shall be written by an insurance company authorized to do business in Kansas.

1. Worker's Compensation Insurance: CONSULTANT shall procure and maintain Workers' Compensation Insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability in the minimum amount of \$500,000 each occurrence. This coverage must extend to any sub consultant that does not have their own Workers' Compensation and Employer's Liability Insurance.

2. Comprehensive General Liability: CONSULTANT shall procure and maintain Comprehensive General Liability Insurance. This coverage shall be on an "Occurrence" basis. This policy shall provide coverage for death, personal injury or property damage that could arise directly or indirectly from the performance of this Agreement. The minimum limits of coverage shall be \$2,000,000 combined single limit per occurrence for bodily injury and property damage.

3. Business Automobile Liability: CONSULTANT shall procure and maintain Business Automobile Liability Insurance. The minimum limits of coverage shall be \$500,000 per occurrence, combined single limit for bodily injury and property damage. This coverage shall be an "Any Auto" type policy.

4. Professional Liability: CONSULTANT shall procure and maintain Professional Liability Insurance. This insurance shall provide coverage against such liability resulting from this Contract, including legal malpractice insurance. The minimum limits of coverage shall be \$2,000,000 with a deductible not to exceed \$25,000. The deductible will be the responsibility of the insured.

In the event that sub consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub consultant's insurance coverage, arising out of negligent acts, errors or omissions of the sub consultants.

#### **ARTICLE 9 - CITY'S RESPONSIBILITIES**

The CITY shall be responsible for providing all data that is available in the files of the CITY and for timely responding to the reasonable requests of CONSULTANT.

#### **ARTICLE 10 - TERMINATION OF AGREEMENT**

The obligation to continue Services under this Agreement may be terminated for cause by either party upon seven (7) days' written notice of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

CITY shall have the right to terminate this Agreement without cause for the CITY's convenience upon thirty (30) days written notice to CONSULTANT, and CONSULTANT shall have the right to terminate this Agreement without cause for CONSULTANT's

convenience with sixty (60) days written notice to CITY. In the event of termination or suspension for CITY's convenience, CITY shall pay CONSULTANT for all Services performed through the date of notice of termination or suspension.

#### **ARTICLE 11 - NONDISCLOSURE OF PROPRIETARY INFORMATION**

CONSULTANT shall consider all information provided by CITY and all reports, studies, calculations, and other documentation resulting from the CONSULTANT's performance of the Services to be proprietary unless such information is available from public sources. CONSULTANT shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of CITY or in response to legal process.

#### **ARTICLE 12 - UNCONTROLLABLE FORCES**

Neither the CITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

#### **ARTICLE 13 - GOVERNING LAW AND VENUE**

This Agreement shall be governed and interpreted by the laws of the State of Kansas.

#### **ARTICLE 14 - MISCELLANEOUS**

##### **14.1 Nonwaiver**

A waiver by either CITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

## **14.2 Dispute Resolution**

The CITY and CONSULTANT agree that disputes relative to this Agreement and the Services provided thereunder should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute CONSULTANT shall proceed with the Work as per this Agreement as if no dispute existed unless otherwise directed by the CITY; and provided further that no dispute will be submitted to arbitration or mediation without both parties' express written consent.

## **14.3 Severability**

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

## **ARTICLE 15 - INTEGRATION AND MODIFICATION**

This Agreement is adopted by the CITY and CONSULTANT as a complete and exclusive statement of the terms of the Agreement between the CITY and CONSULTANT. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and CONSULTANT pertaining to the Services, whether written or oral.

The Agreement may not be modified unless such modifications are evidenced in writing signed by both the CITY and CONSULTANT.

The following documents are made an integral part of this Agreement and incorporated herein:

- A. RFP for Bond Counsel Services dated November 7, 2016.
- B. Proposal of \_\_\_\_\_ dated December 6, 2016.

## **ARTICLE 16 - ASSIGNMENT**

Neither party shall assign this Contract without the written consent of the non-assigning party. Any purported assignment without such consent shall be voidable at the non-assigning party's discretion.

## **ARTICLE 17 - CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

## **ARTICLE 18 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Execution of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged the CONSULTANT'S most favored customer for CONSULTANT'S office performing the Services under this Agreement, for the same or substantially similar service.

The said rates and cost shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

## **ARTICLE 19 - OWNERSHIP OF DOCUMENTS**

CONSULTANT shall be required to work in harmony with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY upon completion for its use and distribution as may be deemed appropriate by the CITY.

## **ARTICLE 20 - NOTICE**

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

**As to CITY:**  
City of Leawood  
Attention: FINANCE DIRECTOR  
4800 Town Center Drive  
Leawood, Kansas 66211  
Voice (913) 663-9121  
Fax (913) 339-6781

**As to CONSULTANT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any party by written notice to the other party. Facsimile or email to the Director of Finance is acceptable notice effective when received, however, facsimiles or emails received after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and CITY.

**ARTICLE 21 - PROJECT TEAM**

CONSULTANT designates \_\_\_\_\_ as the Primary Attorney to provide the Services under this Agreement. The CITY recognizes that other attorneys and support staff will provide Services to the CITY under this Agreement, however, designation of \_\_\_\_\_ as Primary Attorney was a significant basis for the consideration of entering into this Agreement with CONSULTANT. The Primary Attorney may only be changed with the prior written approval of the City.

The CITY designates the Director of Finance as the person responsible for transmitting instructions and direction of the City with respect to Services provided under this Agreement.

**IN WITNESS WHEREOF**, the City of Leawood, at a regular meeting thereof, by action of the City Council and directing the foregoing be adopted, has caused these presents to be signed by the Mayor, and it's seal to be hereunto affixed, and has executed this contract all as of the day and year first above written.

**CITY OF LEAWOOD, KANSAS**

[SEAL]

Attest:

\_\_\_\_\_  
Debra Harper, City Clerk

By: \_\_\_\_\_  
Peggy Dunn, Mayor

Approved as to Form:

By: \_\_\_\_\_  
Patricia Bennett, City Attorney

**CONSULTANT**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_