

SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

Date: October 7, 2009

Agenda Item #: Action A 1

SUBJECT: Wastewater Treatment Plant Financing Options

CONTACT PERSON: Laura Koenig, Clerk/Deputy Finance Director

ISSUE:

The issue is the approval of a professional service contract with K&L Gates not to exceed \$4,200 to serve as bond counsel for the issuance of the \$400,000 bond to complete the WWTP centrifuge project.

Staff is working with Cashmere Valley Bank and K&L Gates to complete the bond ordinance and financial documents.

If they are available prior to the council meeting, staff will deliver the documents to the council for review and action at the October 8th meeting.

RECOMMENDATION:

Staff recommends the Council approve the professional service contract with K&L Gates to serve as bond counsel for the issuance of the \$400,000 bond to complete the WWTP centrifuge project.

SUMMARY STATEMENT:

City staff has been working with Jane Towery to negotiate a loan to provide funding for completion of the WWTP Centrifuge project. The Centrifuge project is underway and scheduled to be complete in October. The City needs to move forward with completion of the financing to pay for the project.

The City is required to have bond counsel to issue municipal bonds. The City's attorney firm of Kenyon Disend does not have a bond counsel on staff and has recommended K&L Gates. The contract has been reviewed and approved by Bruce Disend.

FISCAL IMPACTS:

\$4,200 to be paid from the bond proceeds.

RECOMMENDED ACTION:

Approval of the professional service contract with K & L Gates as bond counsel for the bond for the centrifuge project.

ATTACHMENTS: A. Contract with K&L Gates

October 1, 2009

Ms. Laura Koenig
City Clerk/Deputy Finance Director
PO Box 1199
319 Main Street
Sultan, WA 98294-1199

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BY:.....

Re: City of Sultan - Bond Counsel Services

Dear Ms. Koenig:

On behalf of the City of Sultan (the "City"), you have asked my firm K&L Gates LLP (the "Firm" or "K&L Gates") to represent the City as bond counsel in connection with the City's issuance of a water and sewer revenue bond to establish a line of credit with ~~U.S. Bank~~ ^{Commercial Valley}. We welcome the opportunity to represent the City in connection with this financing and look forward to working with you, other members of the City staff and your City Attorney.

I enclose our Terms of Engagement for Legal Services, which supplement this letter and include additional information regarding our legal services, our relations with our clients, potential conflicts and other matters. Please review this letter and the Terms of Engagement carefully and share it with the appropriate City representatives. We are sending a copy of this letter to Bruce Disend, your City Attorney, for his review.

If this letter and the Terms are not consistent with your or their understanding of our engagement in any respect, or if you or Bruce have any questions concerning the nature and terms of our engagement, please contact me so that we can address any concerns at the outset.

The Scope of Our Engagement

We understand that the Firm is being engaged to act as bond counsel solely for the City and not to represent any affiliated entity, director, officer or employee not specifically identified herein.

We will provide the following legal services in connection with this matter:

1. Advise the City concerning the legal requirements – under state and federal law – for structuring, issuing and selling a bond or other obligation to establish a line of credit.
2. Prepare the proceedings, notices and other documents necessary for the authorization, issuance and sale of the bond.
3. Attend meetings held by the City regarding the issuance and sale of the bond when requested by the City. We can arrange for an attorney to be available by telephone during a meeting when it would be impractical to attend in person.

4. Advise the City with respect to federal tax issues arising in connection with the City's issuance of the bond and drawing on the line of credit.
5. Advise the City with respect to disclosure requirements under state and federal securities laws in connection with the City's issuance of the bond.
6. Prepare the closing documents and the bond for execution by the City and delivery to the Bank.
7. Coordinate delivery and closing of the bond.
8. Subject to the completion of proceedings to our satisfaction, render our legal opinion regarding the validity and binding effect of the bond, the source of payment and security for the bond, and, if applicable, the excludability of interest on the bond from gross income for federal income tax purposes.
9. Assemble, prepare and provide to the City and the Bank transcripts of all proceedings and documentation in either bound paper form, hard cover volume or in CD-ROM format (or both, if the City so chooses).

No Conflicts of Interest

We have made a check of our records to determine whether our representation of the City in this matter would create any conflict of interest. Our records show that Jay Reich, a lawyer formerly with the firm, briefly represented Skyridge Estates, LLC in early 2008. The file seems to indicate that Mr. Reich assisted the client in meeting with a representative of the City to discuss the City's plans for providing sewer service to property owned by the LLC. The file is closed, so we consider that representation ended. Since the file is rather thin and Mr. Reich is no longer with the firm, it is difficult to be certain what exactly the issues were between the City and Skyridge Estates. In any case, the matter appears not directly related to the loan transaction that the City now wants to undertake with Cashmere Valley Bank. Nor do we think that the City's interest in the current loan transaction would be adverse to the interests of our former client.

We therefore have concluded that our prior representation of Skyridge Estates LLC will not create a conflict of interest if we represent the City as bond counsel in the proposed loan transaction. If you have information that casts doubt on that conclusion, please let me know right away. Let me know also if you or the City Attorney have any other questions about our proposed representation of the City in light of our prior representation of Skyridge Estates, LLC. Beyond the ethical imperatives that guide us, we are very sensitive to the trust that our clients place in us as attorneys.

Our Charges

Our fees for bond counsel services are typically based on the principal amount of the bonds or other obligations issued. In accordance with our current fee structure, our fees for a long-term (ten-year) revenue bond financing to establish a bank line of credit of \$400,000 would be approximately \$4,200. We would also expect to be compensated for expenses such as copying, courier service, travel (only if approved in advance by the City) and telephone and facsimile charges incurred in performing bond counsel services. These fees and expenses are typically payable from bond proceeds.

Our Billing and Payment Arrangements

All bond counsel fees are payable only upon the successful issuance and sale of the bonds, notes or other obligations. We will typically deliver a statement for our fees at or shortly following the closing of the issue, with a subsequent billing for expenses upon completion of the transcript.

Our Staffing of This Engagement and Communications with City

I will be the principal contact with respect to the Firm's representation of the City. You should contact me with any questions you may have about our work or any other aspect of our representation of you. You can reach me at the office at (206) 370-8395 at your convenience. There are seven lawyers in our public finance group in Seattle, so we can always provide "back up" help as necessary.

Our representation of the City will be staffed by such partners, associates, paralegals and other professional staff as may be appropriate under the circumstances. If you or any City representatives have any questions or concerns about the staffing of this matter, please let me know right away so we can address the concerns.

We will endeavor to keep you apprised of significant developments in the course of our engagement, to consult with you about our work on an ongoing basis and to obtain your direction on critical issues. If at any point you wish to discuss any issues or to clarify the legal advice we have provided to you, I hope you will call upon us.

Our Agreement

In providing legal services to the City, absent timely advice from you to the contrary, we will act in reliance upon the understanding that this letter and the enclosed Terms of Engagement reflect our mutual understanding with respect to the terms of our retention. We recognize that the attorney-client relationship requires the utmost of trust and confidence between parties. Therefore, this agreement shall be terminable immediately upon written notice should either party deem it necessary for any reason to terminate the relationship. We would expect to be paid for our work to the date of termination. The City would be entitled to retain any attorney work product generated to the date of termination to be used solely for its own purposes.

Ms. Laura Koenig
October 1, 2009
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If these arrangements for bond counsel services are satisfactory, please have the enclosed copy of this letter signed as indicated below and return it to us in the enclosed self-addressed, stamped envelope.

On behalf of K&L Gates, I thank you for the opportunity to provide bond counsel services to the City. I look forward to working with you.

Very truly yours,

K&L GATES LLP

By 
David O. Thompson

APPROVED BY THE CITY OF SULTAN, WASHINGTON

Name: _____
Title: _____
Date: _____

DOT:rm
Enclosure
cc: Bruce Disend, City Attorney

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K&L GATES LLP

TERMS OF ENGAGEMENT FOR LEGAL SERVICES

Thank you for selecting K&L Gates LLP ("K&L Gates") to represent the City of Sultan (the "City"). These Terms of Engagement ("Terms"), together with our engagement letter, set forth the basis upon which K&L Gates will provide legal services to the City. We believe it is important to establish clearly the basic terms of our engagement at the outset. Accordingly, if you have any questions concerning these Terms, please contact the lawyer responsible for this engagement so that your questions or concerns may be promptly addressed and resolved.

INTRODUCTION

K&L Gates comprises multiple affiliated partnerships: a limited liability partnership named K&L Gates LLP qualified in Delaware ("K&L Gates-US", the "Firm", or "we" or "us" as the context requires) and maintaining offices in certain states in the U.S. and in Berlin, Beijing, Dubai, Frankfurt, Shanghai and Singapore; a limited liability partnership of the same name incorporated in England and Wales and maintaining our London and Paris offices ("K&L Gates-UK"); a general partnership, K&L Gates, practicing from our office in Taipei, Taiwan; and, a general partnership, K&L Gates, Solicitors, practicing from our office in Hong Kong (each a "K&L Gates entity").

The City has engaged K&L Gates-US to provide legal services as described in our enclosed engagement letter. That letter and these Terms confirm the nature, scope and terms of our engagement. Absent a contrary agreement between us, we will understand that our engagement letter and these Terms supersede any prior oral understandings between us and together form the contract ("Engagement Contract") for our initial engagement and any subsequent assignments that we may mutually agree upon.

OTHER K&L GATES ENTITIES

You agree that, as your agent, we may engage other K&L Gates entities to assist us in carrying out our engagement, where appropriate and with notice to you. In that event, each K&L Gates entity will operate under its Terms of Engagement, a copy of which will be supplied to you at the time the other K&L Gates entity is engaged.

You agree that you will not be a client of another K&L Gates entity unless we have so engaged it on your behalf, as described above, or unless you directly engage it to provide legal services to you.

If K&L Gates-UK or K&L Gates, Solicitors, is engaged, by you or by us on your behalf, to assist you in matters within the scope of our engagement or if lawyers from K&L Gates-

US's Berlin, Dubai or Frankfurt offices are involved in your representation, it will be necessary to comply with the applicable anti-money laundering ("AML") requirements. In connection therewith, we or lawyers from the appropriate office may be required to obtain additional, specific evidence of client identity from you and/or to report certain transactions to the authorities. If these AML requirements are applicable, you will be informed of the details needed for compliance.

OUR LAWYER-CLIENT RELATIONSHIP

The Firm has been engaged to represent only the City, as identified in our engagement letter ("you" or the "Client"), even if someone other than the City, including an insurer or a conduit borrower, is responsible for paying, or has agreed to pay, the Firm's statements. Accordingly, absent a specific, separate engagement to represent such other persons or entities, the Firm has not agreed to represent, and is not representing, any constituent of the City, including elected officials, directors, officers, employees, affiliates, or other persons or entities associated with the City, except as set forth in the engagement letter.

In addition, the Firm's engagement to represent the City is limited to the matter(s) described in the Firm's engagement letter and to any additional matters for which the Firm expressly agrees to provide legal representation.

You acknowledge that the Firm has not provided the City with legal advice concerning the terms and conditions of our Engagement Contract.

OUR CHARGES FOR LEGAL SERVICES

A. Legal Fees

Our fees as bond counsel are typically based on the principal amount of the bonds, notes or other obligations actually issued, plus out-of-pocket costs, as further described in our engagement letter. Unless we make alternative arrangements, we will expect payment of our statements to be made within 30 days of your receipt of our statement.

B. Disbursements

Unless otherwise provided by the engagement letter or other subsequent agreement between us, the City will be billed for disbursements and other charges relating to our professional services. With respect to disbursements incurred on your behalf to vendors and other third parties

for incidental expenses (such as filing fees and travel expenses), you will be billed at our invoiced cost. With respect to internally-generated and other charges (such as photocopying and facsimile transmissions), the City will be billed in accordance with our Schedule of Standard Charges in effect when the charge is incurred. Our current Schedule is attached as Exhibit A to these Terms of Engagement. Where the nature of our engagement requires the retention of third parties (e.g., expert witnesses, accountants, actuaries or other consultants, mediators or arbitrators), we will obtain the City's approval for such retention, and we will forward their statements for services and expenses directly to the City for payment.

C. Other K&L Gates Entities Charges

Where, with notice to the City, we have engaged another K&L Gates entity to assist us in an engagement, we will include their charges in our statement for professional services unless you ask us to arrange for the other K&L Gates entity to invoice the City separately.

D. Questions

If you have any questions about any statement for professional services and related charges that we submit to the City, you should contact your engagement partner as soon as you receive it so that we may understand and address your concerns promptly.

OUR COMMUNICATIONS WITH CLIENTS

The Firm's lawyers strive to keep our clients reasonably informed about the status of our engagements and promptly to comply with reasonable requests for information. To enable us to provide effective representation, you agree to be truthful and to cooperate with us in the course of the engagement and to keep us reasonably informed of material developments.

If there are particular limitations on how you would like us to communicate with you, please advise us in advance about your preferences; we will, of course, abide by your wishes in this regard. Unless you advise us to the contrary, however, we will assume that communication by e-mail and fax is acceptable to you. Absent special arrangements, we do not employ encryption technologies in our electronic communications.

CONFIDENTIALITY

A. Confidentiality and Disclosure

We owe a duty of confidentiality to all our clients. Accordingly, you acknowledge that we will not be required to disclose to you, or use on your behalf, any documents or information in our possession with respect to which we owe a duty of confidentiality to another client or former client.

B. Disclosure to Certain Third Parties

You agree that we may, when required by our insurers, auditors or other advisers, provide details to them of any matter or matters on which we have represented you.

C. Disclosure to Other K&L Gates Entities

You agree that we may disclose confidential information relating to the City, or any matters on which we are representing the City, to other K&L Gates entities.

D. Data Protection

Any information, including personal data, that K&L Gates collects in our global legal practice may be controlled, stored and processed in, and transferred among, any of our offices and with such contractors as we engage to assist us in our practice, and may be transferred to and through any country, including countries outside the European Economic Area which may not have privacy (data protection) legislation and regulations comparable to the laws of the country in which you reside, including European law. The location of our offices and of such contractors may change from time to time, and we may acquire offices and engage contractors in other countries at any time. We understand that, in engaging the Firm, you expressly consent to all such control, storage, processing and transfers.

CONFLICTS OF INTEREST

The Firm's lawyers, acting in a variety of practice areas and in multiple jurisdictions, provide and will provide legal services to thousands of clients and future clients. Those clients may be competitors, customers, suppliers or have other business dealings and relationships inter se. As a result, those clients may have matters in which their interests are actually or potentially adverse to one another.

In these circumstances, the Firm's ability to represent the City in any matter involving, directly or indirectly, another client will be governed by applicable rules of professional conduct, unless otherwise agreed to by and between the City and the Firm and, as appropriate, any other Firm client. To allow the Firm to represent both the City and other current and future clients in pending or future matters to the fullest extent consistent with applicable ethical restrictions, the Firm requests our clients to agree to a limited waiver of certain actual or potential conflicts of interest.

Specifically, by this engagement, (1) you agree that, to the extent permitted under applicable ethical standards, the Firm can represent other clients whose interests are actually or potentially adverse to the City, provided that: (a) the matter is not substantially related to any current or concluded matter in which the Firm has represented the

City; (b) in carrying out any such other representation, the Firm shall not violate the duty of confidentiality that we owe to the City; and (c) prior to undertaking the adverse representation, the Firm has reasonably concluded, in the existing circumstances, that the Firm can provide competent and diligent representation to the City and each other affected client and that the proposed representation complies with applicable ethical standards; and, (2) you agree that the City will not seek to disqualify us from representing other clients with respect to any matters where such provisos are satisfied.

You further agree that, if the City chooses to withdraw its consent to the Firm's representation of another client in any such adverse representation, the City will, at our request, engage other counsel, and, after any brief and reasonably necessary transition period for which we will not bill you, the City will permit us to terminate our representation of the City unless any rule or statute or tribunal with jurisdiction precludes us from doing so.

Finally, you agree that, for the purposes of determining whether any conflict may exist, the City, and not any affiliated entity or person, shall be considered as the Firm's sole client.

OPPOSING LAWYERS

In addition to our representation of business and not-for-profit entities as well as individuals, we also regularly serve as legal counsel to lawyers and law firms. From time to time, we engage other lawyers and law firms to represent us. As a result, opposing lawyers in a matter may be a lawyer or law firm that we represent now or may represent in the future. Likewise, opposing lawyers in a matter may represent our firm now or in the future. Further, we have professional and personal relationships with many other lawyers, often because of our participation in professional organizations. Collectively, these situations are common in the legal field. We believe that these relationships with other lawyers will not adversely affect our ability to represent the City.

DOCUMENT RETENTION

The City's original hard copy documents and property, described further below, will be returned to you upon conclusion of our representation of you on a particular matter (unless they are relevant to another matter on which we continue to represent you) and, upon our receipt of payment for outstanding fees and other charges, subject to applicable Rules of Professional Conduct. At that time, you will also have the opportunity to accept the remainder of your entire client file, including lawyer work product. As this office keeps all files in a digital image format, if you request your file, we will provide it in an electronic format on a CD, DVD or other medium. Should you decide not to accept your remaining file at that time, you authorize us to destroy your files at our discretion. If you do not request the return of your file at the time your matter is concluded,

we may retain or destroy the file without further notice to you.

Original documents and property, if not returned to you for any reason, will be designated for permanent retention and will not be destroyed without your prior approval. Such items include, but are not limited to, money orders, travelers checks, stocks and bonds, final executed releases, settlement agreements, contracts and sale or purchase agreements, judgments, deeds, titles, easements, wills and trusts, powers of attorney and all other dispositive estate planning documents.

The Firm retains the right to make copies of your file, at our expense, for our own information and retention purposes.

CLIENT RESPONSIBILITIES

It is possible that you may have insurance policies relating to the matter which is the subject of our engagement. You should carefully check all policies you have purchased and, if coverage may be available, you should provide notice to all insurers that may provide such coverage as soon as possible. Although we will be pleased to assist you in assessing the potential for coverage under any policies you may have, our engagement will not embrace advising you with respect to the existence or availability of insurance coverage for matters within the scope of our engagement unless you supply us with copies of your insurance policies and expressly request our advice on the potential coverage available under such policies.

SEVERANCE OF TERMS

If all or any part of our Engagement Contract is or becomes illegal, invalid or unenforceable in any respect, then the remainder will remain valid and enforceable.

THIRD PARTY RIGHTS

No provision of our Engagement Contract is intended to be enforceable by any third party. Accordingly, no third party shall have any right to enforce or rely on any provision of our Engagement Contract.

ASSIGNMENT

Neither you nor we shall have the right to assign or transfer the benefit or burden of our Engagement Contract without the written consent of the other party.

DEFINITIONS

In these Terms of Engagement a reference to a "matter" is to a transaction, case or other matter as to which at any time the City has engaged us; and, any reference to "our services" is to the legal services to be provided by us to the City as described in our engagement letter and any

other legal services provided by us to you at any time in relation to a matter.

INCONSISTENCIES

In the event of any inconsistency between our engagement letter and these Terms, the engagement letter shall prevail.

RESOLVING PROBLEMS AND DISPUTES

If you have any complaints or concerns about our work for the City, please raise these in the first instance with the lawyer responsible for your engagement or with the Firm's Chairman and Global Managing Partner (Peter J. Kalis: 412-355-6562 or 212-536-4828). We will investigate your complaint promptly and carefully and do what we reasonably can to resolve the difficulties to your satisfaction.

APPLICATION OF TERMS AND AMENDMENTS

These Terms supersede any earlier terms of business we may have agreed with you and, in the absence of express agreement to the contrary, will apply to the services referred to in any engagement letter accompanying these Terms and all subsequent legal services we provide to you. From time to time, it may be necessary to amend or supersede these Terms by new terms. Where this is the case, we will notify you of the changes and, unless we hear from you to the contrary within 14 days after such notification, the amendments or new terms will come into effect from the end of that period.

K&L GATES LLP

SCHEDULE OF STANDARD CHARGES

2009

DESCRIPTION OF CHARGE: =====	STANDARD CHARGE =====	UNIT BASIS =====
Photocopying/Image Printing	\$0.18	Each copy
Color Copying/Printing	\$1.00	Each copy
Facsimile	\$0.75	Each outgoing transmitted page, plus cost of telephone line usage
CD Burning	\$25.00	Per CD
Word Processing	\$1.00	Per page if in excess of 30 pages per month; actual charge is based on the equivalent number of keystrokes per page

Legal Research: The Firm pays for Lexis and Westlaw under monthly fixed fee contracts. The actual, monthly fixed fee is allocated to all users of the database each month, and client charges for such usage are directly proportional to the actual research conducted on their behalf.

Long Distance Telephone Calls: The charge for long distance calls is based on the actual time length of the call placed at rates that reasonably approximate our costs.

Secretarial Overtime: As required by client specific circumstances, secretarial overtime will be charged at the Firm's average hourly rate for secretarial overtime.

The following are examples of items that will be charged at their out-of-pocket cost to K&L Gates:

Courier (Federal Express, UPS, etc)

Business Meals

Off-site Storage Retrieval