

**CO-BOND COUNSEL CONTRACTS**

**FINANCE, AUDIT AND ACCOUNTABILITY COMMITTEE**

**FEBRUARY 26, 2007**

## **PURPOSE**

To brief the Finance, Audit and Accountability Committee on the proposed award of new three-year contracts with law firms to provide co-bond counsel services in connection with the issuance of the City's bonds, notes and other debt obligations.

## **BACKGROUND**

### **Co-Bond Counsel Services**

- Assist in the preparation of resolutions, ordinances, official statements, escrow agreements and legal documents in connection with authorizing the issuance of bonds and other city debt instruments
- Assist in obtaining approval of the issuance of the City's bonds from the Texas Attorney General
- Render legal opinions and representations in connection with the issuance of City bonds
- Provide legal advice as needed in connection with City bond elections, financings and related matters.

### **Contract History**

- In May of 1996, pursuant to a Request for Proposals and the recommendation of the City Attorney, the City Council selected two teams of law firms to provide co-bond counsel services:

(1) Team A – consisting of McCall, Parkhurst & Horton, LLP as bond counsel and The Ronquillo Law firm (M/WBE certified law firm) as co-bond counsel to provide legal services to the City in connection with the issuance of its Water and Sewer System Bonds, Water and Sewer System Commercial Paper Notes, bonds issued by the

Consolidated Economic Development Boards, and certain other City conduit issuers such as the Downtown Dallas Development Authority, Tax Increment Financing bonds, Public Improvement District bonds and other special district bonds, and Airport System (Love Field, Red Bird Airport, Convention Center Heliport) Revenue Bonds; and

(2) Team B - Vinson & Elkins, L.L.P. as bond counsel and Robinson, West & Gooden, P.C. (M/WBE certified law firm) as co-bond counsel to provide legal services to the City in connection with the issuance of its General Obligation Bonds, Certificates of Obligation, Contractual Obligations, Convention Center/Arena Bonds, Risk Notes and Dallas Multifamily Housing Acquisition Corporation Obligations.

The contracts were for an initial term of three years, renewable for an additional two years. On May 26, 1999, the City Council, upon recommendation of the City Attorney, adopted Resolution No. 99-1716, authorizing a two-year extension of the Co-Bond Counsel contracts with McCall, Parkhurst & Horton, L.L.P. and The Ronquillo Law Firm (Team A) and Vinson & Elkins, L.L.P. and Robinson, West & Gooden, P.C. (Team B) until May 8, 2001, under the same terms and conditions. In May 9, 2001, the City Council adopted Resolution No. 01-1488 authorizing new five year contracts with McCall, Parkhurst & Horton, L.L.P. and The Ronquillo Law Firm (Team A) and Vinson & Elkins, L.L.P. and Robinson, West & Gooden, P.C. (Team B) until May 9, 2006. When The Ronquillo Law Firm dissolved, the City Council, on a bond sale by bond sale basis, authorized the law firm of Delgado , Acosta, Braden & Jones, P.C. (M/WBE certified law firm) to provide co-bond counsel services for Team A. The contract for Team B, Vinson & Elkins, L.L.P. and West & Gooden, P.C. (formerly Robinson, West & Gooden, P.C.), was extended administratively until August 9, 2006 pursuant to AA 06-1309. Contracts with both Team A and Team B of co-bond counsel firms have expired and the City Council needs to enter into new co-bond counsel contracts.

## **RFP PROCESS FOR CO-BOND COUNSEL**

State law (§ 1201.027, Texas Government Code) requires that the City select the most highly qualified provider of bond counsel services on the basis of demonstrated competence and qualifications to perform the services in accordance with the provisions of Subchapter A, Chapter 2254. This process is similar to the two step selection process used by a governmental entity for selecting professional engineering services, where the City first selects the most highly qualified provider of services on the basis of demonstrated competence and qualifications and then attempts to negotiate with that provider a contract at a fair and reasonable price.

A Request for Proposals for bond counsel and co-bond counsel services was issued September 28, 2006. Eight proposals were received on October 20, 2006 from the following firms:

### **Bond Counsel Firms**

Andrews Kurth L.L.P.

Fulbright & Jaworski L.L.P.

Vinson & Elkins, L.L.P.

McCall, Parkhurst & Horton, L.L.P.

### **Co- Bond Counsel Firms**

Delgado, Acosta Braden & Jones, P.C.

Escamilla & Poneck, Inc.

Tijerina & Kun, P.C.

West and Associates, L.L.P.

The proposals were reviewed and all of the firms were interviewed by the following persons: Thomas Perkins, Jr., City Attorney, Jesus Toscano, Jr., Administrative Assistant City Attorney, Chris Bowers, Chief of Litigation, Gwendolyn Satterthwaite, Executive Assistant City Attorney, Warren Ernst, Assistant City Attorney, Craig Kinton, City Auditor, and David Cook, Chief Financial Officer.

Based upon input from the evaluators, the City Attorney recommends that the City Council enter into contracts with: (1) McCall, Parkhurst & Horton, LLP as bond counsel and Escamilla & Poneck, Inc. as co-bond counsel (Team A) to provide legal services to the City in connection with the

issuance of its Water and Sewer System Bonds, Water and Sewer System Commercial Paper Notes, bonds issued by the Consolidated Economic Development Boards, and certain other City conduit issuers such as the Downtown Dallas Development Authority, Tax Increment Financing bonds, Public Improvement District bonds and other special district bonds; and (2) Vinson & Elkins, L.L.P. as bond counsel and West and Associates, L.L.P. as co-bond counsel (Team B) to provide legal services to the City in connection with the issuance of its General Obligation Bonds, Certificates of Obligation, Contractual Obligations, Convention Center/Arena Bonds, and Risk Notes. A recommendation regarding which Team should provide co-bond counsel services for the City's Love Field and Dallas Executive Airport System bonds will be determined at a later date.

The contracts will be for an initial term of three years, renewable for one additional two year term. Under the terms of the contracts, approximately 25% of the bond counsel services will be performed by West and Associates, L.L.P. and Escamilla & Poneck, Inc., M/WBE firms. Escamilla & Poneck, Inc. is a MBE law firm certified by the South Central Texas Regional Certification Agency, City of Houston, Central & South Texas Minority Business Council and an Historically Underutilized Business certified by the State of Texas. Escamilla & Poneck, Inc. will seek certification as an M/WBE certified firm from the North Central Texas Regional Certification Agency. West and Associates L.L.P.'s certification as an M/WBE firm is pending.

**Co-Bond Counsel Contract Fees**

Historically, the fees for legal services provided by the bond counsel/co-bond counsel firms in connection with the issuance, sale and delivery of the City’s bonds are contingent upon the sale and delivery of the bonds and are payable from bond proceeds or Water Utilities funds, as applicable, based on a combination of an hourly rate fee and bond opinion fee, as follows:

<u>FIRM</u>	<u>FEE</u>
<u>Bond Counsel Firms</u>	Hourly rate fee for services rendered, plus an opinion fee of \$.30 per \$1,000 increment of bonds issued
<u>Co-Bond Counsel Firms</u>	Hourly rate fee for services rendered, plus an opinion fee of \$.15 per \$1,000 increment of bonds issued

The hourly rates for bond counsel law firms have remained the same since 1996. Hourly rates for M/WBE co-bond counsel firms were increased in 2001 to the same hourly rate as bond counsel firms based on the additional experience level of co-bond counsel firms in public finance area.

<u>Previous Hourly Rates</u>	
Partners	\$225
Associates	\$150
Paralegals	\$90

The fee arrangement for Bond Counsel and Co-Bond Counsel under the new proposed contract would remain the same, with no changes to the percentage opinion fees; however, we recommend that the hourly fee rates

be increased. The hourly fees for the lead attorneys and partners at the bond counsel and co-bond counsel firms would be \$300.00, junior level partners and senior associates with public finance experience would be \$250.00, associate attorneys (with less than 4 years of experience would be \$200.00) and paralegals would be \$90.00. The proposed increase to the current hourly rate fees is reflected below:

**Bond Counsel/ Co-Bond Counsel Hourly Rates**

**VINSON & ELKINS, L.L.P.**

<b><u>Partners</u></b>	<b><u>Hourly Rate</u></b>
Ray Hutchison	\$300.00
Ben Brooks	\$300.00
Steve Gerdes (Tax counsel)	\$300.00
George Rodriguez	\$300.00
<b><u>Junior Partner/ Senior Associate</u></b>	
Jennifer Webster	\$250.00
Monica Coffey	\$250.00
<b><u>Associates</u></b>	\$200.00
<b><u>Paralegals</u></b>	\$ 90.00

**MCCALL, PARKHURST & HORTON, L.L.P.**

<b><u>Partners</u></b>	<b><u>Hourly Rate</u></b>
Jeffrey Leuschel	\$300.00
Harold Flanagan (Tax counsel)	\$300.00
Mark Malveaux	\$300.00
<b><u>Junior Partner/ Senior Associate</u></b>	
Sara Tangen	\$250.00
<b><u>Associates</u></b>	\$200.00
<b><u>Paralegals</u></b>	\$90.00

**WEST AND ASSOCIATES L.L.P.**

<b><u>Partners</u></b>	<b><u>Hourly Rate</u></b>
Royce West	\$300.00
<b><u>Junior Partner/ Senior Associate</u></b>	
Tonya Tarpeh	\$250.00
Lisa Tatum	\$250.00
<b><u>Associates</u></b>	\$200.00
<b><u>Paralegals</u></b>	\$ 90.00

**ESCAMILLA & PONECK, INC.**

**Partners**

Douglas Poneck

**Hourly Rate**

\$300.00

John Rice (Tax Counsel)

\$300.00

**Junior Partner/ Senior Associate**

Juan Aguilera

\$250.00

Cynthia Figueroa Calhoun

\$250.00

**Associates**

\$200.00

**Paralegals**

\$ 90.00

**RECOMMENDATION**

Approve three-year Co-Bond Counsel contracts with McCall, Parkhurst & Horton, L.L.P. and Escamilla & Poneck, Inc.(Team A) and Vinson & Elkins, L.L.P. and West and Associates, L.L.P.(Team B), with a two-year renewal option.

This item will be on the February 28, 2007, Council Agenda. Council Resolution is attached.