

Contract Number 1720643-01  
Original Contract Number 1720643

October 2017 F. Dutchie  
City of Philadelphia  
Office of the City Treasurer

## **STANDARD AMENDMENT AGREEMENT**

## **CONFORMED**

**THIS STANDARD AMENDMENT AGREEMENT** ("Amendment Agreement") is made as of December 7, 2017 and effective the 1<sup>st</sup> day of January, 2018 (the "Effective Date") by and between The City of Philadelphia (the "City"), by and through its Office of the City Treasurer ("Department"), and Ballard Spahr, LLP ("Provider"), a limited liability partnership with its principal place of business at 1735 Market Street, 51<sup>st</sup> Floor, Philadelphia, PA 19103.

### **BACKGROUND**

The City and Provider entered into a certain Contract, Contract Number 1720643, dated July 11, 2017, for an Initial Term from January 1, 2017 through December 31, 2017, which Contract includes the General Provisions, the Provider Agreement and any and all exhibits and attachments thereto (collectively, the "Base Contract"), wherein Provider agreed to render various Services to the City in accordance therewith; and

The City and Provider desire to enter into an amendment to the Base Contract, Contract Number 1720643-01, for the period January 1, 2018 to December 31, 2018, to add an Additional Term and to increase the amount of compensation payable under the Base Contract by an amount not to exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), in order for Provider to continue to render the Services and provide the Materials specified in the Base Contract; and

The City and Provider have agreed to amend certain terms and conditions of the Base Contract as set forth herein.

In consideration of the mutual obligations set forth herein, and each intending to be legally bound, the City and Provider covenant and agree as of the Effective Date as follows:

**ARTICLE I: AMENDMENTS TO THE CONTRACT**

With the exception of the following amendments set forth in this Amendment Agreement, and subject to councilmanic appropriation of funds, the terms and conditions of the Base Contract shall be and remain in full force and effect:

**1.1 Definitions.**

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Base Contract

**1.2 Term.**

The Base Contract is amended to add an Additional Term, commencing January 1, 2018 and expiring December 31, 2018.

**1.3 Compensation.**

As compensation for the Services and Materials being provided under this Contract, the City covenants and agrees to increase the amount of compensation payable to Provider by an amount not to exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000.00). Therefore, notwithstanding anything in this Contract to the contrary, in no event shall the amount certified by the Office of the Director of Finance for Services and Materials during the Contract including this Amendment Agreement, exceed FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00).

**1.4 Electronic Signatures.** The Parties agree to conduct this transaction electronically, including the execution of this Amendment Agreement using the means of electronic signature provided below.

IN WITNESS WHEREOF, the Parties, intending to be legally bound by all of the Contract Documents, have caused this Amendment Agreement to be executed by their respective duly authorized officers as of the date in the heading of this Amendment Agreement.

APPROVED AS TO FORM  
SOZI PEDRO TULANTE, CITY SOLICITOR Through: THE CITY OF PHILADELPHIA  
Office of the City Treasurer

Per: DocuSigned by:  
Francois Dutchie  
E2DD4B0A2D21470...

Name: Francois Dutchie

Title: Chief Deputy City Solicitor

By: DocuSigned by:  
Rasheia Johnson  
F34BB946F8F9416...

Name: Rasheia Johnson

Title: City Treasurer

BALLARD SPAHR, LLP

By: DocuSigned by:  
Valarie J. Allen  
250F803C8A1F489...

Name: Valarie J. Allen

Title: Partner

WITNESS

By: DocuSigned by:  
Laura Cavacini  
A07B31A2958048C...

Name: LAURA CAVACINI





## City of Philadelphia Contract Routing Slip

### External Negotiation/Encumbrance & Budget Verification (Conformance Manager)

1. Review contract as signed by vendor and consult with supervisor.

Click the check box to attach additional documentation, if required.

2. Confirm Encumbrance then forward in ACIS to Budget Verification.
  3. Confirm Budget Verification completed in ACIS.
- ☒ Send to Law.

### Approve as to Form – Attorney Upload Document (Optional)

Click the check box to attach additional documentation, if required.

### After AATF – Forward in ACIS

- ☒ Forward in ACIS to Initial Certification.

### Finance Certification

- ☒ Attach the Endorsement Sheet then forward in ACIS to Finance Review.



### Finance Review

- ☒ Review then forward in ACIS to Department Signs Contract.

### After Departmental Review – Forward in ACIS

- ☒ Forward in ACIS to Conformance.

### Conformance Review (Conformance Clerk)

- ☒ Conform Contract and Conform in ACIS.

CONTRACT SUMMARY AND ENDORSEMENT						DATE	11/30/2017
TO THE LAW DEPARTMENT: The attached bid and award described below is referred to you for certification as to form, and where annual surety bond is on file, to have Contractor post satisfactory bond.							
CONTRACTOR Ballard Spahr LLP				FINANCE CONTR. NO. 17 20643		LAW DEPT. NO. 17 20643 01	
				AMT. OF CONTRACT \$400,000.00		ANN. SURETY BOND	
DESCRIPTION Bond Counsel Water				PERIOD COVERED 1/1/2017 - 12/31/2018			
<b>ENDORSEMENT</b>							
OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION Examined: Pat Preston <i>PP</i> 11-30-17 (For the Director of Finance) (Date)				OFFICE OF THE CITY CONTROLLER Examined:  (For the City Controller) (Date)			
This contract approved as to availability of funds under the budget and appropriations pursuant to section 8-200 (2) (d) of the Home Rule Charter.							
<i>Abdul P. Halim</i> 12-01-17 (For the Director of Finance) (Date)				 (For the City Controller) (Date)			
DOCUMENT NO.	ACCOUNT CODE					DEPARTMENT OR AGENCY	AMOUNT CHARGEABLE TO ACCOUNT
	FUND	DEPT	ELEMENT	SUB ELEMENT	CLASS		
						Previously Encumbered	\$200,000.00 ✓
MDXX18000160 01	020	28	07	01	0253	WATER	\$0.00 JE
TOTAL							\$200,000.00
Partial Certification. Contract increased to \$400,000.00. Contract extended to 12/31/2018.							
Amendment						Page 1 of 1	

## Certificate Of Completion

Envelope Id: 881917510D0E4BC29CFA3DEFFFA7FDCE

Status: Completed

Subject: Contract #1720643-01 (Ballard Spahr LLP)

Source Envelope:

Document Pages: 6

Signatures: 4

Envelope Originator:

Certificate Pages: 4

Initials: 0

City of Philadelphia Law Department

AutoNav: Enabled

1234 Market Street

Envelope Stamping: Enabled

Suite 1800

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Philadelphia, PA 19107

law.contractinitiation@phila.gov

IP Address: 170.115.248.25

## Record Tracking

Status: Original

11/10/2017 7:32:05 AM

Holder: City of Philadelphia Law Department

law.contractinitiation@phila.gov

Location: DocuSign

## Signer Events

Valarie J. Allen

AllenV@ballardspahr.com

Security Level: Email, Account Authentication  
(None), Access Code

## Signature

DocuSigned by:  
Valarie J. Allen  
250F903C8A1F498...

Using IP Address: 108.171.130.161

## Timestamp

Sent: 11/21/2017 7:52:24 AM

Viewed: 11/21/2017 7:59:03 AM

Signed: 11/21/2017 7:59:59 AM

## Electronic Record and Signature Disclosure:

Accepted: 11/21/2017 7:59:03 AM

ID: 90081490-d72d-4210-b29a-127b5652c5be

LAURA CAVACINI

Cavacini@ballardspahr.com

Security Level: Email, Account Authentication  
(None), Access Code

DocuSigned by:  
Laura Cavacini  
A07B31A2B50046C...

Using IP Address: 108.171.130.161

Sent: 11/21/2017 8:00:00 AM

Viewed: 11/21/2017 8:54:54 AM

Signed: 11/21/2017 8:55:04 AM

## Electronic Record and Signature Disclosure:

Accepted: 11/21/2017 8:54:54 AM

ID: cf33a159-af58-4e13-80a0-da7163d89457

Keola Harrington

keola.harrington@phila.gov

Security Level: Email, Account Authentication  
(None)

## Completed

Using IP Address: 170.115.248.25

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Viewed: 11/21/2017 8:55:19 AM

Signed: 11/21/2017 8:55:23 AM

## Electronic Record and Signature Disclosure:

Accepted: 12/7/2017 6:22:16 AM

ID: 7e8e4dd9-08ad-405b-bcce-bd36869a9fa9

Francois Dutchie

Francois.Dutchie@phila.gov

Security Level: Email, Account Authentication  
(None)

DocuSigned by:  
Francois Dutchie  
E2DD480A2021470...

Using IP Address: 170.115.248.24

Sent: 11/21/2017 8:55:24 AM

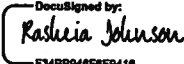
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Signed: 11/22/2017 7:52:19 AM

## Electronic Record and Signature Disclosure:

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<b>Finance ContractCertification</b> Finance.ContractCertification@phila.gov Security Level: Email, Account Authentication (None)	<b>Completed</b>  Using IP Address: 170.115.248.25	Sent: 11/27/2017 1:27:09 PM Viewed: 11/30/2017 1:10:46 PM Signed: 12/1/2017 11:56:12 AM
<b>Electronic Record and Signature Disclosure:</b> Accepted: 12/1/2017 11:54:52 AM ID: 6f61e022-0076-436b-b64a-20d92cc8ed8d		
<b>Catherine Paster</b> Catherine.Paster@phila.gov City of Philadelphia Security Level: Email, Account Authentication (None)	<b>Completed</b>  Using IP Address: 170.115.248.24	Sent: 12/1/2017 11:56:14 AM Viewed: 12/4/2017 6:01:03 AM Signed: 12/4/2017 6:01:07 AM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
<b>Rasheia Johnson</b> rasheia.johnson@phila.gov Security Level: Email, Account Authentication (None)	<div> <small>DocuSigned by:</small>    <small>F34B8946F6F9416...</small> </div> Using IP Address: 170.115.248.25	Sent: 12/4/2017 6:01:21 AM Viewed: 12/4/2017 10:29:34 AM Signed: 12/4/2017 10:29:48 AM
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<b>Keola Harrington</b> keola.harrington@phila.gov Security Level: Email, Account Authentication (None)	<b>Completed</b>  Using IP Address: 170.115.248.25	Sent: 12/4/2017 10:29:50 AM Viewed: 12/4/2017 10:32:39 AM Signed: 12/4/2017 10:32:43 AM
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp



Agent Delivery Events	Status	Timestamp
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Keola Harrington keola.harrington@phila.gov Security Level: Email, Account Authentication (None)	<b>VIEWED</b> Using IP Address: 170.115.248.24	Sent: 12/4/2017 6:01:09 AM Viewed: 12/4/2017 6:01:18 AM Completed: 12/4/2017 6:01:20 AM
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Electronic Record and Signature Disclosure:  
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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LAURA CAVACINI Cavacini@ballardspahr.com Security Level: Email, Account Authentication (None), Access Code	<b>COPIED</b>	Sent: 11/21/2017 7:52:23 AM Viewed: 11/21/2017 8:55:41 AM
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Electronic Record and Signature Disclosure:  
Accepted: 11/21/2017 8:54:54 AM  
ID: cf33a159-af58-4e13-80a0-da7163d89457

Controller Contracts Controller.Contracts@phila.gov Security Level: Email, Account Authentication (None)	<b>COPIED</b>	Sent: 12/7/2017 8:18:30 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	12/7/2017 8:18:30 AM
Signing Complete	Security Checked	12/7/2017 8:18:30 AM
Completed	Security Checked	12/7/2017 8:18:30 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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**This Electronic Records and Signature Disclosure is provided by the City of Philadelphia in connection with a pending electronic transaction. Any party proceeding with such electronic transaction is deemed to have consented i) to conduct the transaction by electronic means; and ii) where execution of an agreement is required, to the use of electronic signatures using the method provided in the agreement. Questions regarding this Electronic Records and Signature Disclosure should be addressed to [econtractphilly@phila.gov](mailto:econtractphilly@phila.gov).**

Contract Number 1720643

March 2017 M. Gutierrez (tc)  
City of Philadelphia  
Office of the City Treasurer

## **PROVIDER AGREEMENT**

### **(Legal Services)**

THIS PROVIDER AGREEMENT is made as of the 11<sup>th</sup> day of July, 2017, by and between THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania (the "City"), by and through its Office of the City Treasurer (the "Department"), and Ballard Spahr, LLP ("Provider"), a limited liability partnership, engaged in the practice of law, with its principal place of business located at 1735 Market Street, 51<sup>st</sup> Floor, Philadelphia, PA 19103.

### **BACKGROUND**

The City has determined to engage Provider to provide, and Provider is willing to deliver to the City, certain legal services more fully described in this Contract (defined in the General Provisions), in accordance with the provisions of the Contract Documents (defined in the General Provisions) which comprise this Contract, including this Provider Agreement, The City of Philadelphia Professional Services Contract General Provisions For Legal Services, as revised August 2014 (the "General Provisions"), and all of the other Contract Documents.

In consideration of the foregoing premises, the covenants and agreements set forth in the Contract Documents, and intending to be legally bound by this Contract, the City and Provider covenant and agree as follows:

### **ARTICLE I: GENERAL TERMS**

#### **1.1 Incorporation of Background.**

The Background set forth above is hereby incorporated by reference herein.

1.2 **Definitions.**

Capitalized terms used but not otherwise defined in this Provider Agreement shall have the meanings set forth in the General Provisions. A copy of the General Provisions is attached hereto and hereby incorporated herein by reference.

**ARTICLE II: TERM**

2.1. **Initial Term.**

The term of this Contract shall commence on January 1, 2017, and shall expire on December 31, 2017 (such period, the "Initial Term"; the Initial Term and any Additional Term or Additional Terms (each as defined in the General Provisions), the "Term"), unless terminated earlier in accordance with the terms of this Contract.

3.3 **Additional Term(s).**

This Contract may be amended by the City, in its sole discretion, in accordance with Section 2.2 (Additional Terms) of the General Provisions. The terms and conditions applicable during the Initial Term shall be applicable during any Additional Term.

**ARTICLE III: SCOPE OF SERVICES; SERVICES AND MATERIALS**

3.1 **Scope of Services; Services and Materials.**

Provider shall perform the Services and provide the Materials (collectively, the "Scope of Services") described in **Exhibit PA-1** which is attached hereto and incorporated herein by reference.

3.2 **Departmental Guidelines.**

All Services shall be performed and Materials delivered in accordance with the Departmental Guidelines described in **Exhibit PA-2**, which is attached hereto and incorporated herein by reference and modified as follows in light of the fact that Provider will be paid only a negotiated flat fee and Provider will bear all expenses:

- (a) Francois Dutchie is the initial Responsible Law Department Attorney.
- (b) The first paragraph of Section II is deleted.
- (c) Sections IV, VIII(C) and IX are deleted.

- (d) Section VIII(A) is amended to read, "Please avoid rotating assignments among attorneys unfamiliar with the assigned legal matter.

**3.3 Lead Counsel Provisions.**

The City and Provider understand and agree that the purpose of this Contract is to obtain the specific and special services of Valarie Allen, Esquire, hereinafter called "Lead Counsel". In the event that, for any reason, Lead Counsel is unable to perform the Services or the duties required hereunder, the City may, in its sole discretion, terminate this Contract immediately without liability to the City; provided, however, that the City shall pay Provider for Services satisfactorily performed prior to the date of termination.

**ARTICLE IV: COMPENSATION**

**4.1 Amount.**

With respect to bond services, as compensation for the Services and Materials rendered and provided, the City agrees to pay Provider a sum that shall be proposed to the Provider after consultation between the Director of Finance and the City Treasurer and/or such other City officials as the Director of Finance shall deem necessary. The proposed payment shall be mutually agreed to by the City and Provider prior to the closing date for any bonds issued or any derivative transaction entered into by the City for which Provider has provided services pursuant to this Contract. In determining an appropriate fee, the Director of Finance and/or City Treasurer may take into account the following factors:

- the relative complexity of the transaction
- the amount of time spent by Provider (to be supported by time records where applicable)
- the dollar amount of the transaction
- any other extenuating circumstances.

With respect to all other Services and Materials rendered and provided, the City covenants and agrees to pay to Provider and amount not to exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000.00). Notwithstanding anything in this Contract to the contrary, in no event shall the amount certified by the Office of the Director of Finance for Services and Materials during the Initial Term or any Additional Term exceed the maximum amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00).

**4.2 Payment by the City.**

(a) With respect to bond counsel services, payment to Provider shall be made from the proceeds of the transaction for which Provider has provided Services to the City. Payment shall be made by the trustee, fiscal agent or any other third party fiduciary which holds the proceeds of the transaction for which Provider has provided Services. The City shall authorize payment to Provider only after Provider's timely submission of invoices to the Office of the Director of Finance, in the number, form and content acceptable to the Director of Finance in his or her sole discretion, accompanied by such additional supporting data and documentation as the Director of Finance may require in his or her sole discretion. All payments made to Provider are contingent upon satisfactory performance of the terms and conditions of this Contract and upon the closing of and funding of the transaction for which Provider has provided Services.

(b) With respect to all other Services and Materials rendered or provided, payment shall be made after Provider's timely submission of invoices to the Responsible Official, in the number, form and content acceptable to the Responsible Official, accompanied by such additional supporting data and documentation as the Responsible Official may require. All payments to Provider are contingent upon satisfactory performance of the terms and conditions of this Contract. Provider shall submit its final invoice not more than sixty (60) days from completion of the Services and delivery of Materials. All payments to Provider shall be by checks drawn by the City Treasurer.

c) The City reserves the right to withhold payment of or to offset against any funds payable to Provider, for any invoice if the Director of Finance determines that a discrepancy exists, or for Provider's failure to satisfactorily perform the terms of this Contract, as determined by the City in its sole discretion.

## **ARTICLE V: MISCELLANEOUS PROVISIONS**

### **5.1 Notice.**

Any notice required or permitted to be given under this Contract shall be given in conformity with Section 15.16 of the General Provisions to the following addresses:

#### **IF TO THE CITY:**

Attn.: Keola Harrington  
Assistant City Treasurer  
City of Philadelphia  
Office of the City Treasurer  
Municipal Services Building

1401 John F. Kennedy Boulevard, Suite 640  
Philadelphia, PA 19102  
Phone No.: 215-686-3823  
Fax No.: 215-686-3815

**IF TO PROVIDER:**

Attn.: Valarie Allen, Partner  
Ballard Spahr, LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
Phone No.: 215-864-8565  
Fax No.: 215-864-8999  
Email: allenv@ballardspahr.com

**5.2 Interpretation; Order of Precedence.**

In the event of a conflict or inconsistency between the terms of this Provider Agreement and any term, condition or provision contained in any Exhibit hereto, or any attachment to such Exhibit (including, without limitation, any proposal of Provider), the terms of this Provider Agreement shall control, without giving effect to the inconsistent or conflicting provision of such Exhibit.

**5.3 Acknowledgement of the General Provisions.**

Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the General Provisions and acknowledges that by executing this Provider Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the General Provisions.

**5.4 Other Provisions.**

Other provisions, including, without limitation, Office of Economic Opportunity participation commitments and any exceptions or modifications to the General Provisions of the Contract, are set forth in the following Exhibit attached hereto and incorporated herein by reference:

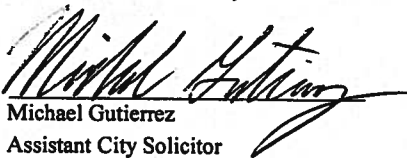
**Exhibit PA-3: Mutually Agreed to Waivers to the General Provisions**

*{THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY. SIGNATURE PAGE FOLLOWS.}*

IN WITNESS WHEREOF, the City and Provider, intending to be legally bound by all of the Contract Documents, have caused this Contract to be executed by their respective duly authorized officers as of the date set forth above.

APPROVED AS TO FORM  
SOZI PEDRO TULANTE, CITY SOLICITOR

Per:

  
Michael Gutierrez  
Assistant City Solicitor

THE CITY OF PHILADELPHIA

Through: Office of the City Treasurer

By:

  
Title: City Treasurer

WITNESS:

  
Laura L. Cavacmi  
Print Name

By:

Title:

IN ACCORDANCE WITH SECTION 8-410 OF THE PHILADELPHIA HOME RULE CHARTER, THE CITY SOLICITOR APPROVES OF THIS CONTRACT FOR THE RENDERING OF LEGAL SERVICES.

Date:

4/28/2017

Approved:

  
SOZI PEDRO TULANTE

Title:

City Solicitor



<b>CONTRACT SUMMARY AND ENDORSEMENT</b>						<b>DATE:</b> 6/7/2017			
TO THE LAW DEPARTMENT: The attached bid and award described below is referred to you for certification as to form, and where annual surety bond is on file, to have Contractor post satisfactory bond.									
<b>CONTRACTOR</b> Ballard Spahr LLP						<b>FINANCE CONTR. NO.</b> 17 20643		<b>LAW DEPT. NO.</b> 17 20643	
						<b>AMT. OF CONTRACT</b> \$200,000.00		<b>ANN. SURETY BOND</b>	
<b>DESCRIPTION</b> Bond Counsel Water						<b>PERIOD COVERED</b> 1/1/2017 - 12/31/2017			
<b>ENDORSEMENT</b>									
<b>OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION</b> Examined: Pat Preston						<b>OFFICE OF THE CITY CONTROLLER</b> Examined:			
PP 6-7-17									
(For the Director of Finance)						(Date)			
This contract approved as to availability of funds under the budget and appropriations pursuant to section 8-200 (2) (d) of the Home Rule Charter:									
Alabed F Halisani 6-8-17									
(For the Director of Finance)						(Date)			
(For the City Controller)						(Date)			
<b>DOCUMENT NO.</b>		<b>ACCOUNT CODE</b>					<b>DEPARTMENT OR AGENCY</b>	<b>AMOUNT CHARGEABLE TO ACCOUNT</b>	
		<b>FUND</b>	<b>DEPT</b>	<b>ELEMENT</b>	<b>SUB ELEMENT</b>	<b>CLASS</b>			
MDXX17001114 01		020	28	07	01	0253	WATER	\$100,000.00	
							<b>TOTAL</b>	\$100,000.00	
Partial Certification.									

## **EXHIBIT PA-1**

### **SCOPE OF SERVICES**

**(Appendix H, Appendix C, entitled City of Philadelphia Tax and Regulatory Status and Clearance for Applicants Redacted)**

# Bond and Disclosure Counsel Services

Response to Request for Proposal for City of Philadelphia Office of the City  
Treasurer for the Philadelphia Water Department and Philadelphia Gas Works

Electronic Submittal: September 14, 2016, 5:00 pm

Hand Delivery: September 16, 2016, 5:00 pm



**Ballard Spahr**  
LLP

Valarie J. Allen  
215.864.8565 | [allenv@ballardspahr.com](mailto:allenv@ballardspahr.com)

# Ballard Spahr LLP

-----  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
TEL 215.665.8500  
FAX 215.864.8999  
www.ballardspahr.com

Valarie J. Allen  
T: 215.864.8565  
F: 215.864.8999  
allenv@ballardspahr.com

September 14, 2016

*Via Upload and Hand Delivery*

Christian Dunbar  
1401 JFK Blvd  
MSB Rm 640  
Philadelphia, PA 19102

Francois Dutchie, Esq.  
One Parkway  
1515 Arch Street  
17<sup>th</sup> Floor  
Philadelphia, PA 19102

Melissa LaBuda  
1101 Market Street  
5<sup>th</sup> Floor  
Philadelphia, PA 19107

Joseph Golden  
800 W. Montgomery Ave  
Philadelphia, PA 19122

Re: Request for Proposals for Bond Counsel and Disclosure Counsel for the City of Philadelphia


Ballard Spahr LLP is pleased to submit its response to the Request for Proposal issued by the City of Philadelphia (City), the City of Philadelphia Water Department and the Philadelphia Gas Works to serve as bond counsel with respect to the City's Water and Wastewater Revenue Bonds and Gas Works Revenue Bonds. Based on our extensive experience participating in principal legal roles on prior City bond transactions, we believe that Ballard Spahr is particularly well qualified to be the City's bond and disclosure counsel.

The Ballard Spahr lawyer responsible for negotiating on behalf of our firm (and the day-to-day contact) is:

Valarie J. Allen, Partner  
Ballard Spahr LLP  
1735 Market Street, 51st Floor | Philadelphia, PA 19103  
Telephone: 215.864.8565 | Fax: 215.864.8999  
E-mail: allenv@ballardspahr.com

Thank you for considering our qualifications. We are eager to continue our longstanding relationship with the City for the transactions proposed. We invite you to call with any questions you may have about our response.

Very truly yours,

  
Valarie J. Allen

Ballard Spahr LLP

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# RFP Response

## 2. Introduction/Executive Summary

### *Overview of Services Being Sought and Proposed Scope of Services*

Ballard Spahr is delighted to present its qualifications to the Office of the City Treasurer (CTO) of The City of Philadelphia (City), the Philadelphia Water Department (PWD) and the Philadelphia Gas Works (PGW) to serve as lead bond counsel and/or disclosure counsel for the City's Water and Wastewater Revenue Bonds and PGW Revenue Bonds or notes and similarly-secured obligations. We have thoroughly reviewed the Project Background and Scope of Work as set forth in Sections I and II, respectively, of the Request for Proposals (RFP) for Bond and Disclosure Counsel for The City of Philadelphia issued by CTO, and we propose this to be at minimum the scope of services and tasks for which we, as lead bond counsel and/or as disclosure counsel, will be retained.

## 3. Applicant Profile

### *a. Business Identification Information*

#### **FIRM INFORMATION**

Ballard Spahr LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
T: 215.665.8500  
F: 215.864.8999  
EIN: 23-0382195  
Limited Liability Partnership  
498 Philadelphia, PA Employees

Ballard Spahr LLP is a national firm of more than 500 lawyers in 14 offices across the country. Our attorneys provide counseling and advocacy in more than 40 areas within intellectual property, litigation, business and finance, real estate, and public finance. We represent a diverse cross-section of clients, ranging from large public companies and privately held corporations to government agencies and nonprofit organizations. Our practices span the life sciences and technology, energy, health care, and other sectors that are driving innovation and growth in today's marketplace.

The firm's mission is straightforward: to provide nothing less than excellence in every legal representation. Our client focus is absolute. We help clients achieve success as they define it. We respect and anticipate their needs, take action to keep them informed, and devise forward-thinking solutions to get the most favorable results. This is Ballard Spahr's pledge.

### *b. Primary Firm Contact*

**Valarie J. Allen**  
Partner, Public Finance Department  
Direct: 215.864.8565  
Fax: 215.864.8999  
[allenv@ballardspahr.com](mailto:allenv@ballardspahr.com)

Ballard Spahr LLP  
1735 Market Street  
51st Floor  
Philadelphia, PA 19103-7599

### *c. Firm Business Background*

Ballard Spahr traces its origins to 1885 and became known as "Ballard and Spahr" in the early 1900s when Ellis Ames Ballard and Boyd Lee Spahr began practicing law together in Philadelphia. The firm became a Pennsylvania limited liability partnership in 1998. It is owned by its partners and managed by a board of directors selected by its partners and headed by a chairperson.

Ballard Spahr is not registered as a minority-, woman-, or disabled-owned business, or as a disadvantaged business (M/W/DSBE) in the Commonwealth of Pennsylvania (Commonwealth). However, Ballard Spahr is committed to the goals of advancing diversity in our firm and in the legal profession, and we are delighted to partner with any M/W/DSBE firm designated by the City, for the best delivery of legal services. Our proposed team of Ballard professionals is comprised entirely of women, and two of the three lawyers on the team, including the lead partner, are African American. More information about Ballard Spahr's commitment to diversity is attached as **Appendix F**.

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## *d. Number of Employees in Philadelphia and the Commonwealth*

As of this writing, Ballard Spahr has 498 employees in Philadelphia, Pennsylvania.

## 4. Project Understanding

Ballard Spahr's team understands the legal and policy issues that the City, PGW and PWD face relating to the structure of financings for PGW and PWD. We have strong working relationships with the City's debt issuance team, advisors, and underwriters, effectively manage transactions and schedules, and participate in all meetings and calls to facilitate each financing. We regularly work with all bond rating organizations and credit enhancement providers.

Please refer to our response concerning scope of services under "INTRODUCTION/EXECUTIVE SUMMARY - Overview of Services Being Sought and Proposed Scope of Services" on page 1. Ballard Spahr is prepared to meet all of the project requirements and provide all services and tangible work products identified in the Scope of Work section of the RFP.

## 5. Proposed Scope of Work

### Cost Proposal

Many clients value cost certainty when engaging counsel for a complex financing. We are eager to represent the City, and are amenable to a variety of billing structures. We gladly will negotiate fixed fee proposals based upon an identified scope of work and a presumed financing schedule. We also are open to less conventional arrangements that the City may want to explore, such as the utilization of blended hourly rates, periodic billing, or installments upon completion of specific milestones or other pre-defined periods. Any bills we submit will set out the time each lawyer bills to the matter as well as a description of the lawyer's activities.

We have a deep and experienced bench of lawyers and paralegals at a broad range of billing rates. This allows us to perform high-quality work effectively and economically. Full résumés for the fee earners listed are attached as **Appendix E**. We have listed below estimated costs based on the assumptions and the scope of services described in RFP Section II - Scope of Work.

### *Bond Counsel*

Hourly rate ranges by employee category. We list below a range of the current standard hourly rates for the firm by fee earner category. Please note that we are a national firm with diverse practice areas and fourteen offices across the country. Our rates vary by practice area and geographic location, and so it may be possible that there will be rate overlap within the fee earner categories (e.g., Senior Partners with billable rates below \$570). For a better predictor of the fees for legal services in connection with this proposal, please see the core team member chart with hourly rates and estimates below.

a. Senior Partner .....	\$570-\$945
b. Junior Partner.....	\$495-\$595
c. Senior Associate.....	\$375-\$485
d. Junior Associate.....	\$260-\$370
e. Paralegal .....	\$100-\$290

**Hourly Rates.** Shown below are Ballard Spahr's standard hourly billing rates for the proposed team. Our standard hourly fees typically are adjusted each year. However, pursuant to the RFP, if we are selected as your legal counsel, we will agree to keep these 2016 hourly rates firm for the first year of our engagement and will seek to retain these rates during all three one-year renewals of our contract, with no more than a 4% annual increase subject to your approval. We are happy to offer a blended hourly rate for bond counsel services of \$416 per hour, weighted per fee earner as shown below.



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Fee Earner	Title	2016 Hourly Rate	% Time	2016 Weighted Hourly Rate
Valarie J. Allen	Partner	\$570	33%	\$188
Kimberly C. Betterton	Partner (Tax)	\$585	10%	\$59
Lauren M. Lemonius	Jr. Associate	\$300	40%	\$120
Joann Cody	Paralegal	\$290	17%	\$49
Weighted Hourly Rate				\$416

**Fee Estimates.** As requested, below are fee estimates for the following transactions based on a theoretical \$200 million transaction. In arriving at the fee estimates listed below, we have assumed a fixed rate, unenhanced issue. With respect to the refunding transactions, we have assumed that there will be no termination of a swap, letter of credit or other credit or liquidity enhancement or derivatives arrangements in connection with the refunding.

We also have assumed that the transaction will close within 90 days of the working group kick-off call or meeting for the transaction.

Bond Transaction Type	Bond Counsel Fee Estimate	Est. Range of Hours Required
a. Competitive new money financing	\$75,000	170-180
b. Negotiated new money financing	\$62,500	140-150
c. Stand-alone current refunding	\$50,000	110-120
d. Stand-alone advance refunding	\$57,500	128-138
e. Commercial Paper	\$75,000	170-180
f. Current refunding, with new money issue	\$42,000	90-100
g. Advance refunding, with new money issue	\$47,500	95-115
h. LOC credit renewal	\$20,000	30-50

## Disclosure Counsel

**Annual flat fee.** As requested, Ballard Spahr proposes an annual flat fee of \$29,500 for ongoing disclosure counsel services. This includes periodic and material event filings to EMMA and posting to the City's investor website. This also includes advice and review pertaining to other investor relations activities, as well as preparation for and participation in a seminar and training for City employees concerning disclosure.

**Fee estimate for services provided in connection with issuance.** Ballard Spahr estimates a fee of \$95,500 for disclosure counsel services provided in connection with any issuance of bonds. In arriving at this fee estimate, we have assumed that the transaction will close within 90 days of the working group kick-off call or meeting for the transaction. We have assumed that the working group meetings will generally be conducted by conference call rather than in person, and that the only in person meetings of the working group will take place for the due diligence session and at preclosing.

**Discount for combination.** We would also like to propose that if selected as both bond and disclosure counsel for PWD or PGW, we would provide a 15% savings to the estimated fees for each of the following transactions (the same assumptions would apply as mentioned above):



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Bond Transaction Type	Bond Counsel Fee Estimate	Disclosure Counsel Fee Estimate	Fee Estimate for Combined Bond and Disclosure Counsel (15% Savings)
a. Competitive new money financing	\$75,000	\$95,500	\$144,925
b. Negotiated new money financing	\$62,500	\$95,500	\$134,300
c. Stand-alone current refunding	\$50,000	\$95,500	\$123,675
d. Stand-alone advance refunding	\$57,500	\$95,500	\$130,050
e. Commercial Paper	\$75,000	\$95,500	\$144,925
f. Current refunding, with new money issue	\$42,000	\$95,500	\$116,875
g. Advance refunding, with new money issue	\$47,500	\$95,500	\$121,550
h. LOC credit renewal	\$20,000	-	-

## Defeasance Legal Advice and Opinions

For legal advice and delivery of opinions regarding defeasance, we estimate that fees will be in the range of \$4,500 to \$9,500.

## IRS Audits

For Internal Revenue Service (IRS) audits, we propose to charge our standard hourly rates. The 2016 standard hourly rate for Kimberly Betterton, our tax partner who would oversee the work, is \$585, as noted above.

## Organization and Personnel Requirements

Our core team for the City will be comprised of the following professionals.

Attorney	Experience
<b>Valarie J. Allen</b> <i>Partner</i>  1735 Market Street, 51 <sup>st</sup> Floor Philadelphia, PA 19103-7599  University of Pennsylvania Law School (J.D. 2002) and Harvard College (A.B. 1992)	Valarie Allen will lead the bond counsel and disclosure counsel teams. Ms. Allen has practiced at Ballard Spahr for 12 years exclusively in the area of public finance. She advises issuers, underwriters, and other borrowers in connection with the structuring, issuance, offering, placement, remarketing, and restructuring of tax-exempt and taxable municipal securities and other debt instruments and derivatives.

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Attorney	Experience
<p><b>Kimberly C. Betterton</b> <i>Partner</i></p> <p>300 East Lombard Street, 18<sup>th</sup> Floor Baltimore, MD 21202-3268</p> <p>William &amp; Mary Law School (J.D. 1995) and University of Pennsylvania (B.A. 1991)</p>	<p>Kim Betterton will provide tax advice and review. Ms. Betterton has more than 19 years of experience, focusing on federal tax laws and regulations involving tax-exempt bonds and exempt organizations, particularly conduit 501(c)(3) financings, governmental bonds, and exempt facility qualification. She counsels clients on post-issuance tax compliance issues, including arbitrage, private use questions, Form 990–Schedule K, remediation as a result of change in use, reissuance, and IRS audit and review activities, and with obtaining 501(c)(3) exemption letters from the IRS.</p>
<p><b>Lauren M Lemonius</b> <i>Associate</i></p> <p>1735 Market Street, 51<sup>st</sup> Floor Philadelphia, PA 19103-7599</p> <p>Harvard Law School (J.D. 2016) and Dillard University (B.A. 2013, <i>summa cum laude</i>)</p>	<p>Lauren Lemonius will assist in the drafting of transaction and disclosure documents and opinions, and she will perform due diligence for the bond counsel and disclosure counsel teams. Ms. Lemonius is an associate in the Public Finance Department. She serves as bond counsel to municipalities, higher education institutions, charter schools, and school districts.</p>

Ballard Spahr has an opinion committee comprised of PA licensed public finance partners who will review any opinion prior to its delivery. Attorneys in our Municipal Securities Regulation and Enforcement (MSRE) Group are also available to guide our clients on regulatory and enforcement issues involving the municipal securities market.

## 6. Specific Questions

### I. General Questions about the Firm

#### *a. Firm Overview*

Public finance is one of Ballard Spahr's five operating departments, and we are consistently ranked among the most active firms in the country for the amount of bonds issued with our opinion. Local governments and their authorities nationwide and throughout the Commonwealth rely on our ability to structure innovative financings to promote economic growth, attract and support residents, improve critical infrastructure, and deliver efficient and sustainable public services.

Our lawyers have worked with virtually every type of governmental entity. Since 1987, we have participated in the issuance of more than \$350 billion of tax-exempt obligations in all 50 states, the District of Columbia, and American territories.

**Our Tax Practice.** Ballard Spahr has a national reputation for experience in the field of taxation. Our Tax Group currently includes four attorneys who focus their practices on the federal and state tax law aspects of public finance transactions, including rules related to arbitrage. Our tax attorneys have analyzed and structured virtually every type of municipal bond transaction. Members of our Tax Group have served as Chair and board members of the American College of Tax Counsel, as officers of the American Bar Association Section of Taxation, and as leaders of the National Association of Bond Lawyers (NABL) and numerous other local tax organizations. Our late partner Frederic L. Ballard, Jr., is the author of ABC's of Arbitrage (American Bar Association, 2011), a reference work currently used by many public officials, attorneys, and investment bankers. Team member Kimberly C. Betterton is currently authoring an update to the 2011 version. She was a

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member of the 2011-2012 Board of Directors of the National Association of Bond Lawyers and the former Editor-in-Chief of *Federal Taxation of Municipal Bonds*, published by LexisNexis.

***Municipal Securities Practice.*** Our Municipal Securities Group has a significant national presence and provides legal advice to issuers, borrowers, investment banking firms, and lenders in a broad range of public offerings, private placements, and direct purchases of municipal securities. Several lawyers in the firm's Securities Group have served as staff members at the U.S. Securities and Exchange Commission (SEC), gaining invaluable experience and providing a unique perspective in guiding our clients through the regulatory requirements and exemptions of federal and state securities laws. Ballard Spahr public finance lawyers also have chaired and are active in NABL's standing Securities Law Committee; and they have actively participated in a number of NABL's ad hoc Securities Law subcommittees and task forces, including the committee tasked with drafting the SEC's secondary market disclosure rules.

Some of our recent experience includes advising on new disclosure standards for municipal pension funds, municipal risk factors, legal remedies, bond security disclosure, compliance with secondary market disclosure, disclosure issues surrounding tax rules, exemptions, and compliance, and addressing perceived shortcomings in the content and timeliness of current industry disclosure.

In addition, as the SEC recently has increased the number of municipal market enforcement actions, a group of Ballard Spahr public finance attorneys and securities litigators has focused specifically on counseling clients with regards to municipal securities regulation and enforcement. (For information about Ballard's Municipal Securities Regulation and Enforcement group, see <http://www.ballardspahr.com/en/PracticeAreas/Practices/Municipal-Securities-Regulation-Enforcement.aspx>.) These attorneys follow all current developments and work with governmental issuers to adopt written policies and procedures – including continuing disclosure policies and procedures – that ensure the timeliness, currency, and completeness of the information provided to investors before, during, and after a bond offering.

## *b. Why Ballard Spahr*

Our firm offers the City the resources, perspectives and experience of our national public finance practice of 50 lawyers, augmented by our strong local presence. As one of the Commonwealth's premier public finance practices, we regularly work with the City on its bond issues and are fluent with the pertinent City ordinances and code, the City Charter, and other state and federal law. This unique combination, unmatched by other firms, will allow us to provide the best possible bond and/or disclosure counsel services to the City.

## *c. Familiarity with City Bond Authorizing Laws and Ordinances and relationship to City's issuing policies*

The City issues revenue bonds to fund the capital programs of the City's self-sustaining enterprises whose revenues secure and pay the bonds being issued. These enterprises include Water, Gas Works and Airport (each an Enterprise). The City's revenue bonds are issued pursuant to the First Class Revenue Bond Act (Act), together with one or more general revenue bond ordinances specific to an Enterprise. Each such general revenue bond ordinance provides issuance authority and security for the bonds of such Enterprise, and for the segregation of Enterprise revenues and all other monies on deposit in the funds and accounts established under such ordinance from all other revenues of the City. Such ordinances also include rate covenants that limit the City's ability to issue debt based on its ability to raise or maintain rates and charges sufficient to secure and repay the debt.

Ballard Spahr has a long history of serving as Bond Counsel, Disclosure Counsel or Underwriter's Counsel in connection with the bond issuances for all of the City's enterprises. We are intimately familiar with the Philadelphia City Charter, the Act and the ordinances pursuant to which PGW and PWD issue debt, as well as the state and city code and regulations relevant to the setting, generation and collection of rates, charges and other revenues by PGW and PWD.

***PWD.*** Ballard Spahr has acted as bond counsel or underwriter's counsel for the PWD in nearly all its financings since 1986. We are intimately familiar with the Restated General Water and Wastewater Revenue Bond Ordinance (Water Bond Ordinance) and all of the other authorizing documents and certifications required for the City to, among other matters, incur, issue and secure debt, enter into and secure credit enhancement agreements and qualified swaps, and allocate and expend

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Water and Wastewater Revenue Bond proceeds. Between bond issuances, we have advised and worked closely with Water Department on legal questions concerning matters such as collection and application of project revenues and bond proceeds, ratesetting, green infrastructure finance, and other matters concerning the Water Bond Ordinance.

**PGW.** We are intimately familiar with the General Gas Works Revenue Bond Ordinance of 1998 (1998 General Ordinance) and all of the other authorizing documents and certifications required for the City to, among other matters, incur, issue and secure debt, enter into and secure credit enhancement agreements and qualified swaps, and allocate and expend Gas Works Revenue Bond proceeds. Ballard Spahr served as counsel to the City with respect to the potential sale of PGW in 2014. During that representation, and our examination of the feasibility of defeasing PGW's tax-exempt debt in connection with a sale, we became highly familiar with the provisions of the the 1998 General Ordinance (and the now-closed 1975 General Ordinance). In 2015 we served as underwriters' counsel for the first bond issuance for PGW since 2011, which included the closing off of the 1975 General Ordinance through the issuance of refunding bonds under the 1998 General Ordinance. We were integrally involved with bond counsel and disclosure counsel in developing a modern disclosure document for the offering.

**Issuing Policies.** We are familiar with the City's Debt Management Policy dated December 2009 and posted on its investor website relating to project revenue bonds. The restrictions imposed by the Pennsylvania constitution and the authorizing statutes that relate to the issuance of project revenue bonds, together with the City's simultaneous objectives of funding City services for its residents and strengthening the City's credit ratings, inform the guidelines and objectives developed by CTO and Finance and contained in the Debt Management Policy. The overriding objectives evident in the policy are to: use diligence in capital planning; issue new money debt only to support the capital plan; limit new money issuances where possible by utilizing other available funding, including pay-go; and pursue savings through refinancing to the extent meaningful savings can be achieved. The increase is an important but, due to the limitations imposed by third-party rate setting, challenging objective in trying to increase capital funding without overleveraging the enterprise.

## II. Water Bond Counsel Questions

### *a. Familiarity with PWD's upcoming Capital program*

Our lawyers are very familiar with PWD's capital program. The City Charter requires City Council to adopt an annual capital budget for the ensuing fiscal year and a capital program showing expenditures for the ensuing five years. As part of our role as bond counsel for PWD, we've reviewed such capital budgets and capital program. The emphasis of the Capital Improvement Program is on: (i) renewal and replacement of the water conveyance and sewage collection systems, (ii) improvements to water and wastewater treatment plants and (iii) CSO mitigation projects consistent with the PWD's COA. A majority of the costs of the capital program is funded with proceeds of Water and Wastewater Revenue Bonds. We are keenly aware of PWD's objectives to grow pay-go capital to reduce leverage and improve coverage, while still meeting the System's capital needs.

### *b. Familiarity with Philadelphia's Water rate making process.*

We supported PWD in the most recent rate setting process, the first with the independent rate board (Board), including reviewing presentations and testimony proposed to be submitted or delivered to the Board. Valarie Allen testified and was cross examined by the public advocate in hearings before the Board. Ultimately, rates must be set sufficient to fund PWD's operations and capital program in order to sustain the system, in addition to payment of debt service for outstanding debt and a sufficient margin to allow the City to meet its covenants under the Water Bond Ordinance and bond insurance agreement.

### *c. Experience with interest rate swaps or hedges; Experience with refunding of variable rate bonds (including various forms of bank liquidity or direct purchases) and advance refunding.*

Ballard Spahr has tremendous experience with variable rate bonds transactions, including unenhanced, unhedged, and/or direct purchase bonds, as well as transactions involving municipal derivative products, including floating-to-fixed and fixed-to-floating interest rate swaps, swaptions, basis swaps, interest rate caps, collars, and floors. We deal with a variety of such derivative products in primary market transactions involving original bond issues, as well as secondary market securitization.

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transactions involving the issuance of custodial receipts, tender option bonds and other synthetic securities. Ballard Spahr advises both public and private market participants on derivative products. We have extensive experience with all aspects of advance refundings, the refunding of variable rate bonds and the restructure and/or termination of swaps in connection with such refundings.

We have served as counsel to the City, Philadelphia Authority for Industrial Development, and numerous other clients in connection with their entering into swap transactions, the re-integration of existing swaps into new transactions, and the termination of swap agreements. Specific to PWD, we served as underwriter's counsel in connection with the swaption for and issuance of the Series 2003 (since refunded) and Series 2005B Water and Wastewater Revenue Bonds. We also served as the City's counsel for a number of forward swaps entered into by the City in 2007 in anticipation of the issuance of variable rate Water and Wastewater Revenue Bonds. Those issuances did not come to pass, and we assisted with the City with the termination of the swaps. We are intimately familiar with the ISDA in place for the swap currently on the Series 2005B Water and Wastewater Revenue Bonds.

*d. What legal/tax/bond issues/challenges can be anticipated with respect to the Water department's plan to construct distributed green infrastructure as a solution to Combined Sewer Outflow ("CSO")?*

The core challenges to be addressed are if and under what circumstances revenues to the Water Fund and/or revenue bond proceeds (taxable or tax-exempt) may be used to pay the costs of green infrastructure, wherever it exists in the City, based on what is permitted under the Water Bond Ordinance, federal tax law, real estate law, and other applicable law. Issues arise such as: (1) whether and how green infrastructure constitutes a "project" that is part of the System within the meaning of the Water Bond Ordinance and the Act? (2) how can green infrastructure that exists on property not owned by the City be treated as part of the System for purposes of financing by PWD? (3) how must the application of proceeds be limited to permit the use of bond proceeds? Additional challenges for finance include, if and how can capital investments in green infrastructure be reflected as assets on a balance sheet?

*e. How does the current Long Term Control Plan ("LTCP") for CSO and the related consent order and agreement affect PWD's ability to issue tax exempt financing?*

Use of tax-exempt bond proceeds to finance green infrastructure is permissible to the extent that (1) the infrastructure constitutes part of the System and, therefore, the City holds some property interest in it, (2) if proceeds are being used to subsidize private development, such subsidy takes the form of grants and not loans.

*f. Does the current PWD long term capital plan that requires a substantial increase in Capital Improvement Program funding create any special challenges or complications?*

PWD derives capital funding from two sources: debt and pay-go. To the extent that PWD has to increase its indebtedness to meet capital funding needs, the concern is that it will over leverage and not be able to meet its rate covenant over the long term. The solutions are to raise rates and thereby raise coverage, increase the rate stabilization fund so that there is a reserve available to manage coverage, or raise pay-go relative to debt. The challenge is that all three of these solutions require raising or structuring rates and charges for such purposes, which means that the independent rate board, in the face of opposition from the public advocate, must buy into and support the effort through rate setting.

*g. Does the PWD's use of long term contracts for the operation of certain facilities create any additional challenges or concerns?*

The use of long term contracts for operation of facilities financed with tax-favored debt (such as tax-exempt bonds, build America bonds or some types qualified tax credit bonds) can create additional challenges. Of primary concern would be whether the contract created private business use of the bond-financed facilities. In order to allay such concerns, we could work with the City either (1) to ensure a particular contract met safe harbors to avoid private business use, (2) to ensure that the amount of private business use was within de minimis limits for each impacted bond issue, or (3) to remedy the situation through remedial action or a voluntary closing agreement with the IRS, if necessary to protect already-issued obligations.

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*b. Issuers are under increasing pressure to provide additional and frequent information to investors. Specifically, describe how your firm would advise the City to make information available through its website and/or investor conferences.*

The City currently has a fairly robust investor website and in recent years has begun hosting annual investor conferences to highlight its credits for the investor community. From a legal perspective, the concern is that whatever information is shared with the investor community is reasonably accessible to all investors.

## III. Water Disclosure Counsel Questions

*a. Firm's proposed disclosure counsel attorney staff for any contract that might result from this RFP*

Please refer to **Organization and Personnel Requirements** above. In addition to the proposed team, we have an additional 40+ public finance attorneys throughout the nation ready to consult if needed. Members of our department that are available if needed include Public Finance partners Teri Guarnaccia, NABL Board member and former chair of it the NABL Securities Law Committee, Brad Patterson, Co-Chair of the firm's Municipal Securities Regulation and Enforcement group, and Bill Rhodes, Chair of the firm's municipal revocery initiative, as well as associates Tesia Stanley, who is a leader in our MSRE group and Kim Magrini, who specializes in municipal pension disclosure..

*b. How would your firm commence engagement, if your firm were to be selected, including timelines and what issues would you anticipate arising?*

As Disclosure Counsel, our focus would be on the following: (1) Performing the requisite diligence to ensure that primary disclosure for PWD bond offerings complies with state and federal securities laws, and is materially accurate and complete, and to be able to deliver to the City a 10b-5 statement to that effect; (2) Ensuring secondary disclosure by the City for PWD is timely, complete, and in compliance with the City's and PWD's continuing disclosure undertakings; (3) Ensuring that all disclosure is not violative of anti-fraud or insider trading provisions of the securities laws; (4) Regularly reviewing the City's disclosure policies and procedures for compliance; and (5) Advising the City and PWD on ways to improve investor outreach and communication in compliance with law. In all aspects of disclosure, we will push the City to be leaders in the market with regard to disclosure, if that is your goal.

We believe have established a trusted relationship with PWD management as bond counsel. Due to Ballard Spahr's deep familiarity with PWD as its bond counsel, we would expect that there would be some substantial economies if the CTO were to hire Ballard Spahr as disclosure counsel for PWD, both in the diligence phase, as well as within transactions. We see this happening in three stages— somewhat simultaneous, at least leading up to the first official statement.

**1. Diligence.** A comprehensive diligence review will allow us to establish the factual foundation upon which all of our advice and our legal opinions will be based. This would include review of diligence provided in 2016 and current audited and unaudited financial statements meetings with the executive, finance and legal teams for PWD; site visits to facilities; review of secondary market disclosure, including dissemination through websites and social and other media; and review of disclosure policies and procedures. We would expect this phase to take two to three months, conservatively, which could be accelerated as the 2017 financing calendar would demand.

**2. Ongoing, Secondary Disclosure.** We will do a meticulous inventory and examination of all ongoing secondary market disclosure and dissemination points. We will review the City's and PWD's websites, investor presentations and conferences, and any social media engines to ensure compliance with law and provided recommendations on how to make information accessible, digestible and attractive (i.e., command attention) to investors.

It is our understanding that at this point PWD has annual disclosure training. We would look forward to conducting the training going forward, including providing municipal securities updates.

**3. Primary Disclosure.** As disclosure counsel we would immediately begin foundational and fact-checking diligence in anticipation of a 2017 issue and accompanying dissemination of a primary disclosure document. PWD's official statement has improved substantially over the last few years. We will continue toward creating a document that reasonably conforms with industry is accessible to investors.



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## *c. Familiarity with PWD's Capital program*

We have substantial familiarity with PWD's capital program, as described above under 2(a).

## *d. Please describe previous representative engagements where your firm has provided disclosure services to major water or utility clients, especially those run as an enterprise by a city.*

We served as disclosure counsel in connection with the City's 2014 issuance of Water and Wastewater Revenue Bonds. We served as underwriters' counsel for the City's 2015 Gas Works Revenue Refunding Bonds.

Additionally, we have listed our experience as disclosure counsel in Appendices A, B, C, and D.

## *e. Issuers are under increasing pressure to provide additional and frequent information to investors. Specifically, describe how your firm would advise the City to make information available through its website and investor conferences.*

Notwithstanding that PWD is a department of the City whose debt issuances are managed by the City Treasurer's Office, Investors are bound to go directly to the PWD website for information. There should be link displayed prominently on the front page of the PWD website for investor information. Such linked, when accessed, should at the very least direct the investor to the CTO investor information website. Ideally, investors would not have to leave the PWD website and the PWD website would host PWD-specific information – financial statements, official statements, upcoming sales announcements, recorded road shows, and the like.

It is not feasible to have a live, interactive investor conference with each sale. However, PWD might consider producing a virtual facilities tour and quarterly or semi-annual update for investors.

## *f. Describe any concerns or challenges regarding the Rate making Board Findings.*

The June 7th rate determination marked the first time that water and wastewater rates and charges were set by an independent ratemaking board rather than the Water Commissioner. This was also the first time that the PWD sought to submit a lean and exacting proposal without any cushion for risk, or negotiation. As a result, the findings were conservative in terms of granting PWD the rate increases and structural changes proposed. The challenge going forward will be continuing to educate the Board – and the rate payers – in a nonadversarial setting concerning the pressure points for the PWD financial operations and sustainability.

## **IV. PGW Bond Counsel Questions**

### *a. Discuss your firm's familiarity with PGW's Commercial Paper Program, and Letters of Credit;*

Ballard Spahr lawyers are familiar with PGW's \$60 million commercial paper program (Commercial Paper Program) that PGW instituted for working capital purposes. The Commercial Paper Program is supported by irrevocable letters of credit from three banks, each with a stated amount of \$20 million. PGW has not used its Commercial Paper Program for working capital purposes since May 2009. Ballard Spahr lawyers have extensive experience with commercial paper and working capital financings. We are also familiar with PGW's other outstanding letters of credit that are currently securing certain series of Gas Works Bonds.

### *b. Discuss your firm's familiarity with PGW's Capital program,*

PGW finances its capital needs through a combination of proceeds of revenue bonds and notes, DISC surcharges, PGW-generated capital (pay-go) and certain earnings on the funds and accounts under the 1998 General Ordinance. A significant part of the program is the replacement of PGW's cast iron mains with modern plastic, for which PGW project full replacement to be completed in 2063, based on the projected cost of replacement and cost of capital. To accomplish its CIP, PGW requires external approvals from the City Council with respect to adoption of the capital budget, and PUC with respect to imposition of rates sufficient to generate revenues to cover capital expenditures and debt service.

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## *c. Discuss your firm's familiarity with PGW's rate making process;*

The Pennsylvania Utility Commission (PUC) sets rates for PGW under Section 2212(e) of the PA Public Utility Code. PGW recovers its costs of operations, funds its debt service, satisfies its Rate Covenant and other bond covenants, and achieves other financial objectives through the imposition and collection of rates as set forth in its Gas Service Tariff approved by the PUC. Rates break down into the following components: Base Rate or Customer Charge, Gas Cost Rate, Distribution, Surcharges, and Weather Normalization Adjustment. In addition, Section 2212(f) permits PGW to impose and collect rates and charges as necessary for PGW to make certain payments to the City of Philadelphia required under any agreements with or ordinances of the City, subject in certain cases to PUC approval.

## *d. Describe your firm's experience with interest rate swaps or hedges. Please describe your firm's experience with refunding of variable rate bonds (including various forms of bank liquidity or direct purchases) and advance refunding;*

Ballard Spahr has tremendous experience with variable rate bonds transactions, including unenhanced, unhedged, and/or direct purchase bonds, as well as transactions involving municipal derivative products, including floating-to-fixed and fixed-to-floating interest rate swaps, swaptions, basis swaps, interest rate caps, collars, and floors. We deal with a variety of such derivative products in primary market transactions involving original bond issues, as well as secondary market securitization transactions involving the issuance of custodial receipts, tender option bonds and other synthetic securities. Ballard Spahr advises both public and private market participants on derivative products. We have extensive experience with all aspects of advance refundings, the refunding of variable rate bonds and the restructure and/or termination of swaps in connection with such refundings. We have served as counsel to the City, Philadelphia Authority for Industrial Development, and numerous other clients in connection with their entering into swap transactions, the re-integration of existing swaps into new transactions, and the termination of swap agreements.

## *e. Describe the legal/tax/bond issues/challenges anticipated with respect to PGW's plan to expand its liquefaction capacity at the Richmond and/or Patsyunk plants in order to serve the direct LNG sales market;*

Net income from LNG sales, among other things, reduces revenue pressure on PGW's other ratepayers. As described under "POTENTIAL LNG FACILITIES EXPANSION" and the Consultant's Engineering Report in PGW's most recent Official Statement, as supplemented on August 26, 2016, PGW conducted a non-binding solicitation to gauge the potential for sale of LNG, if available. To the extent that there is demand significant enough to justify an expansion of the facilities, a tax question that may arise is whether such an expansion to facilitate LNG sale constitutes a governmental purpose for which tax-exempt financing may be used, or whether the facilities would have to be financed by PGW on a taxable basis, or through some other means.

## *f. Issuers are under increasing pressure to provide additional and frequent information to investors. Specifically, describe how your firm would advise the City to make information available through its website and investor conferences.*

Notwithstanding that PGW consists of assets of the City, the debt for which is managed by the City Treasurer's Office, Investors are bound to go directly to the PGW website for information. There should be link displayed prominently on the front page of the PGW website for investor information. Such link, when accessed, should at the very least direct the investor to the CTO investor information website. Ideally, investors would not have to leave the PGW website and the PGW website would host PGW-specific information – financial statements, official statements, upcoming sales announcements, recorded road shows, and the like.

It is not feasible to have a live, interactive investor conference with each sale. However, PGW might consider producing a virtual facilities tour and quarterly or semi-annual update for investors.



# RFP Response

## V. PGW Disclosure Counsel Questions

### *a. Describe your firm's proposed disclosure counsel attorney staff for any contract that would result from this RFP.*

Please refer to **Organization and Personnel Requirements** above. In addition to the proposed team, 40+ additional nationwide resources specializing in public finance are available as needed to consult, including Public Finance partners Teri Guarnaccia, NABL Board member and former chair of the NABL Securities Law Committee, Brad Patterson, Co-Chair of the firm's Municipal Securities Regulation and Enforcement group, and Bill Rhodes, Chair of the firm's municipal revocery initiative, as well as associates Tesia Stanley, who is a leader in our MSRE group and Kim Magrini, who specializes in municipal pension disclosure.

### *b. How would your firm commence engagement, if your firm were to be selected, including timelines and what issues would you anticipate?*

As Disclosure Counsel, our focus would be on the following: (1) Performing the requisite diligence to ensure that primary disclosure for PGW bond offerings complies with state and federal securities laws, and is materially accurate and complete, and to be able to deliver to the City a 10b-5 statement to that effect; (2) Ensuring secondary disclosure by the City for PGW is timely, complete, and in compliance with the City's and PGW's continuing disclosure undertakings; (3) Ensuring that all disclosure is not violative of anti-fraud or insider trading provisions of the securities laws; (4) Regularly reviewing the City's disclosure policies and procedures for compliance; and (5) Advising the City and PGW on ways to improve investor outreach and communication in compliance with law. In all aspects of disclosure, we will push the City to be leaders in the market with regard to disclosure, if that is your goal.

Due to Ballard Spahr's familiarity with PGW, we would expect that there would be some substantial economies if the CTO were to hire Ballard Spahr as disclosure counsel for PGW, both in the diligence phase, as well as within transactions. We see this happening in three stages—somewhat simultaneous, at least leading up to the first official statement.

**1. Diligence.** A comprehensive diligence review will allow us to establish the factual foundation upon which all of our advice and our legal opinions will be based. This would include review of diligence provided in 2016 and current audited and unaudited financial statements; meetings with the executive, finance and legal teams for PGW; site visits to facilities; review of secondary market disclosure, including dissemination through websites, investor presentations and conferences, and social and other media; and review of disclosure policies and procedures. We would expect this phase to take two to three months, conservatively, which could be accelerated as the 2017 financing calendar would demand.

**2. Ongoing, Secondary Disclosure.** We will do a meticulous inventory and examination of all ongoing secondary market disclosure and dissemination points. We will review the City's and PGW's websites and any social media engines to ensure compliance with law and provide recommendations on how to make information accessible, digestible and attractive (i.e., command attention) to investors.

It is our understanding that at this point PGW has annual disclosure training. We would look forward to conducting the training going forward, including providing municipal securities updates.

**3. Primary Disclosure.** As disclosure counsel we would immediately begin foundational and fact-checking diligence in anticipation of a 2017 issue and accompanying dissemination of a primary disclosure document. PGW's official statement has improved substantially over the last year. We will continue toward creating a document that reasonably conforms with industry is accessible to investors.

### *c. Discuss your firm's familiarity with PGW's capital program.*

Please refer to our response to IV(b) above.

# RFP Response

*d. Please describe previous representative engagements where your firm has provided disclosure services to major utility clients, especially those run as an enterprise by a city.*

We have included a listing of our experience and previous engagements where we served as disclosure counsel for various utilities and for the City in Appendices A, B, C, and D.

*e. Issuers are under increasing pressure to provide additional and frequent information to investors. Specifically, describe how your firm would advise the City to make information available through its website and/or investor conferences.*

Notwithstanding that PGW's debt issuances are managed by the City Treasurer's Office, investors are bound to go directly to the PGW website for information. There should be link displayed prominently on the front page of the PGW website for investor information. Such link, when accessed, should at the very least direct the investor to the CTO investor information website. Ideally, investors would not have to leave the PGW website and the PGW website would host PGW-specific information – financial statements, official statements, upcoming sales announcements, recorded road shows, and the like.

It is not feasible to have a live, interactive investor conference with each sale. However, PGW might consider producing a virtual facilities tour and quarterly or semi-annual update for investors.

## 7. Statement of Qualifications; Relevant Experience

Ballard Spahr's team is highly qualified to perform all of the services sought by the City, the PWD, and PGW. Our experience as bond counsel to the PWD uniquely positions us to provide uninterrupted, quality service based on a deep familiarity and understanding of its programs and bond issues. This experience, along with our other experience with the City, provides a knowledge base that could easily translate into serving as bond counsel for PGW.

Ballard Spahr affirms that it meets all of the minimum requirements stated in the RFP.

### I. Bond Counsel

#### *a. Water Utility Bond Financings*

Attached as **Appendix A**, we have included a list of our relevant experience since 1/1/2013 with tax exempt Water Utility bond financings.

#### *b. Gas Utility Bond Financings*

Attached as **Appendix B**, we have included a list of our relevant experience since 1/1/2013 with tax exempt Gas Utility bond financings.

#### *c. Other City Financings*

Attached as **Appendix C**, we have included a list of our relevant experience since 1/1/2013 with the City's other tax exempt indebtedness including General Obligation, PAID, PMA, PRA, TRAN, and Airport debt.

#### *d. Practical Solutions*

**Philadelphia Redevelopment Authority.** In spring 2015, Ballard Spahr served as bond counsel to the City and the Philadelphia Redevelopment Authority (PRA) in connection with the refunding of qualified redevelopment bonds and tax-exempt bonds issued in 2005, a majority of the proceeds of which had yet to be expended at the time of the refunding. The issue arose, how could we issue an opinion that the refunding bonds were tax-exempt, based on certifications from PRA and the City that the old proceeds would be expended on projects expeditiously, when in over ten years such expenditures still had not occurred? Led by tax partner Kim Betterton, we worked with the PRA, CTO, and Finance to develop and document a plan of expenditure, which permitted representatives of those offices to certify to a date certain by which the proceeds would be expended for tax purposes. In setting that date, we weighed providing as much time as possible with what the IRS, if an audit

## RFP Response

ever came about, would deem reasonable given the facts and circumstances. On this basis, Ballard was able to deliver its opinion, the refunding was able to go forward, and the City realized significant debt service savings.

**Philadelphia Water Department.** In 2015, in our capacity as bond counsel to PWD, management brought to us the question if whether the cost to restore and replace customer-owned lead service lines could be a valid capital expenditure payable from bond proceeds or other capital funds of the City under the Water Fund. The recent publicity attached to the lead-contaminated water in Flint, Michigan, only amplified PWD's need to identify and implement effective, affordable mitigation strategies for reducing the risk of lead exposure in the home through water. PWD proposed that at the time of a water main replacement, affected service lines should be simultaneously replaced. The most economical way to do this was to incorporate the replacements into the project. The issue was whether PWD capital dollars could be expended to pay for replacement of lead service lines not owned by the City, and therefore, for purposes of the Water Bond Ordinance, not part of the System. Using a "you-break-it-you-bought-it" approach, we reasoned that the replacement of service lines rendered unsuitable by the water main replacement project was an integral part of the capital project itself, and therefore, an eligible project or capital expenditure under the Water Bond Ordinance and the Act.

**University of Pennsylvania.** In the Spring of 2015, we served as bond counsel in connection with a complex \$400 million refunding transaction for the University of Pennsylvania, combining current and advance refundings, employing among other novelties a maturity of "step coupon" bonds. We have extensive experience with variable rate bonds, and have participated in auction rate, weekly and daily floating rate and indexed floating rate structures, some supported by letters of credit or (for stronger credits) standby bond purchase agreements, and even some with self liquidity (for the very best credits).

### *e. Understanding and experience with variable rate debt, bank liquidity and direct purchases*

Please refer to our responses under 2(c) and 4(d). Ballard Spahr lawyers have deep understanding and significant experience with variable rate debt, bank liquidity and direct purchased. We regularly represent borrowers, issuers or commercial banks in these transactions.

### *f. Ensuring a successful post-issuance compliance monitoring system*

Several actions, above and beyond adopting procedures, can significantly enhance the efficacy of a post-issuance monitoring system:

- (1) Proper training of officials and employees who either have responsibility for or control over bond-financed facilities greatly increases the chances of success. The IRS offers cost-free training webinars and materials for this purpose. Ballard Spahr also can prepare materials and conduct training sessions or calls to assist with the on-going learning process and keeping the City up-to-date in its understanding of tax compliance.
- (2) Annual review by the CTO and bond counsel of the City's current tax-compliance procedures to ensure that the procedures are effective and being utilized properly is another key way to ensure success. For example, having procedures that are too complex or that the City is having difficulty putting into practice is not much better than having no procedures at all. We should work together to create an overall compliance program that is manageable from a practical perspective.
- (3) It is essential for the City to keep good records regarding which proceeds of each bond issue financed which projects. Monitoring needs to cover not only the bond-financed facilities at large, but also whether each individual bond issue is in compliance with its particular requirements.

It is also very important to ensure that the procedures (i) are understood by all individuals who must carry them out, and (ii) are not so complex that they will intimidate the people who must carry them out. We have worked with many governmental and non-governmental organizations to structure procedures that are manageable. Ms. Betterton is currently drafting a paper with the Government Finance Officers' Association and the National Association of Bond Lawyers describing the why, when and how of post-issuance compliance procedures. We could work with the City to ensure that the appropriate people know what they need to do and that there is succession planning to ensure that knowledge and function survives through retirements and attrition. Often, knowing how to spot potential issues is the most critical skill.

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Finally, we would suggest that you plan post-issuance compliance while the transaction is still active and parties are doing diligence because potential problems often come to light and can be solved while all of the relevant parties are gathered and focused.

## *g. Experience working with in-house legal counsel in connection with legal issues arising from the issuance of debt*

Our public finance lawyers regularly work with in-house legal counsel on various matters relating to debt issuance, including (i) a detailed analysis that's required to determine if bonds can be issued as tax-exempt bonds under current treasury rules and regulations, and how the rules relating to expenditure for working capital purposes apply in a particular situation, (ii) state law and bond authorizing statute issues, (iii) all federal tax law matters, and (iv) post-issuance tax compliance matters and (v) continuing disclosure matters. We also work with in-house counsel in connection with tax controversy representation in audits of outstanding bond issues by the Internal Revenue Service. Our lawyers strive to establish and maintain collaborative relationships with our clients' in-house legal and management teams by responding promptly to inquiries and assignments and cultivating communication with our clients whenever possible.

## *h. Experience preparing disclosure documents with entities similar to the City, PWD, and PGW*

We served as disclosure counsel in connection with the City's 2014 issuance of Water and Wastewater Revenue Bonds. We served as underwriters' counsel for the City's 2015 Gas Works Revenue Refunding Bonds. Additional examples of our experience preparing similar documents are listed in Appendices A, B, C, and D where we have served as underwriter's counsel and disclosure counsel.

## *i. Recommended training for staff members responsible for spending bond/note proceeds*

We have worked closely with the City in developing its current post-issuance compliance procedures. Additionally, Ms. Betterton and Ms. Allen have participated in preparing and presenting training materials in two annual training sessions which included officials and employees throughout the City's departments. As the City continues to develop its procedures, these training sessions could become more specific to problematic areas as opposed to broad, general overviews. The City should keep track of specific problem areas and involve bond counsel during the course of a normal bond issuance, or in between transactions, to develop solutions. The goal is to make the procedures manageable for the people who must carry them out.

Ballard Spahr is happy to assist in the training of City staff regarding post-issuance compliance. We would also be willing to prepare materials and training sessions or calls to assist with the on-going learning process and keeping the City up-to-date in its understanding of tax compliance.

## *j. Ensuring a successful post-issuance compliance monitoring system*

Please refer to our response in 7.I.f above.

## *k. Bond counsel evaluation after financing*

In connection with a financing, the threshold question for an issuer is whether its bond counsel enabled it to accomplish what the issuer needed through the financing. Then the very next question should be "how painful was it?"

An excellent bond counsel understands the projects – and the goals and necessities that underlie them – that compel an issuer to undertake the financing. An excellent bond counsel empowers a working group to accomplish the issuer's goals, without adding unnecessary complication. It does this by being highly responsive and proactive; by anticipating potential issues and, rather than just spotting them, offering workable solutions and alternatives; by being a team player in some instances, but a leader in others; by questioning why certain methods or structures are being recommended and whether it is in the issuer's best interest, but always being respectful to the other members of the working group and the issuer's relationships with them. Finally, an excellent bond counsel must be equipped with the knowledge, experience and sophistication to respond to any challenge that the issuer is ready to take on. These are the qualities that every Ballard Spahr bond counsel team seeks to bring to a financing. This is what we will bring to the City as its bond and/or disclosure counsel.

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In addition, we hold our lawyers responsible individually for ensuring that our clients are satisfied with the service they receive from Ballard Spahr. In 2012, Ballard Spahr hired a full-time experienced client interviewer to seek feedback from both the long-term and newer clients using our law firm. We are one of the few firms in the region with an employee completely dedicated to getting the client's point of view on our services.

In our program, clients are invited to participate in a 50-minute interview with our client interviewer. Our client interviewer goes to their offices and asks them a series of questions about our legal services, including our strengths, weaknesses, costs, and billing, and how we can provide the highest quality representation to them. We also ask what we can do to prepare for needs our clients may have in the coming months or years.

We have interviewed more than 100 clients and more than 100 individuals since the program's inception in 2008. The feedback from our clients is shared with principal partners and firm management. We also take the general feedback from clients and share it more widely through the firm through presentations and reports so that all of our attorneys and staff can benefit from hearing the opinions of our clients. Finally, we track feedback and trends in a database created for client interviews.

This program has allowed our clients a chance to speak freely about our services and enabled us to be responsive to their concerns. Feedback from clients is overwhelmingly positive about Ballard Spahr attorneys, but we encourage clients to tell us what's on their mind, and clients have been appreciative of the chance to evaluate our firm to a neutral listener. We would love for the City to become involved in the program and would welcome its participation at any time.

## II. Disclosure Counsel

### *a. Relevant experience as disclosure counsel*

In the last 10 years, Ballard Spahr attorneys have prepared primary disclosure for nearly 700 transactions throughout the nation, totaling more than \$54 billion in par amount. These representations have involved tax-exempt and taxable obligations of every kind: traditional municipal debt, such as general obligation bonds, revenue bonds, special assessment and tax increment bonds, as well as tax, revenue, grant, and bond anticipation notes, and certificates of participation in lease-purchase and installment purchase obligations. As bond counsel, Ballard Spahr lawyers regularly communicate with rating agencies concerning structuring of transactions.

Attached as **Appendix D**, we have included ten examples of transactions where our firm and members of our team have served as disclosure counsel since 1/1/2013.

### *b. Understanding of the changing or increasing expectations regarding the scope and quality of disclosure of the SEC for municipal securities issuers. Please comment on how issuers like the City can best meet or exceed local, state, and federal disclosure obligations.*

A disclosure counsel's threshold duty is to ensure that its issuer client is complying in all respects with its disclosure undertakings and the securities laws. The question becomes what is material information to primary and secondary market investors, beyond what historically has been included a continuing disclosure agreement requires? Market analysts and investors recognize what is creating pressure for credits like the City, PGW and PWD: pension obligations, OPEB, labor contracts, limited revenue growth. Issuers need to, as much as practicable, be transparent and present clearly, coherently, and completely this information; and to make it accessible to investors.

### *c. Experience with the preparation of disclosure documents for a state or large city*

We regularly serve as disclosure counsel, prepare the official statement, and assist with secondary market disclosure requirements for entities that have complex disclosure requirements as those of the City. Our disclosure responsibilities have included advice regarding the appropriate format and content of official statements and presentation of necessary information therein, conformity with disclosure guidelines, facilitating compliance by underwriters with SEC and MSRB rules, investigation of facts and compilation of data, assistance in due diligence procedures, document drafting and delivery of legal opinions and letters of assurance regarding disclosure matters.

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Public Finance attorneys working within the firm's Municipal Recovery Initiative have advised both issuer and buy-side clients on a number of high yield municipal direct placements with hedge funds and other non-traditional high yield buyers. We have worked with municipal issuers to maintain critical market access during periods of high fiscal distress, including (i) enhanced risk and credit disclosure drafting, (ii) investor site visits and in-person meetings with municipal officials, (iii) live internet roadshows, (iv) the adoption of enhanced, voluntary secondary market disclosure undertakings, including the conduct of periodic investor calls, and (v) the initiation of (web-based and EMMA-based) the posting of cash flows and other unaudited financial results.

## *d. Practical Solutions*

Some of our practical solutions we have developed for our clients, including for many of the transactions listed in **Appendix D** include advising our municipal clients to substantially rewrite their traditional risk disclosure documents, especially our governmental clients facing credit rating declines. We have crafted new, in-depth risk disclosure for general obligation bonds, including investment considerations concerning defaults and remedies, practical limitations on available statutory and contractual remedies and the practical limitations on available statutory and contractual remedies. Some of our recent experience includes advising on new disclosure standards for municipal pension funds, municipal risk factors, legal remedies, bond security disclosure, compliance with secondary market disclosure, disclosure issues surrounding tax rules, exemptions, and compliance, and addressing perceived shortcomings in the content and timeliness of current industry disclosure. Additionally, we provide ongoing advice to our clients concerning the dissemination of, and we review and draft for dissemination, secondary disclosure, whether through EMMA, publication of investor information on issuer websites, or through other media. With pension-funding issues confronting many state and local government, including the Commonwealth of Pennsylvania's public pensions and more than 500 local pension plans, our attorneys are familiar with GASB accounting standards 67 and 68. Further, we have developed issuer-friendly pension disclosure templates and diligence forms designed to elicit and document all material information concerning pension funding and liabilities.

## *e. Suggested recommendations to improve disclosure from an investor standpoint*

Regulators, credit analysts and investors continue to ask for more consistent disclosure that is easier to review and understand. We have been working with the PWD and its disclosure team, as its bond counsel, and we worked in 2015 with PGW and its disclosure team, as underwriters' counsel, to achieve just that. If we are engaged by the City, we will perform a thorough review of the prior offering statements and make detailed recommendations on how to improve the City's disclosure. These suggestions will track best practices, such as those set forth in the White Paper on Best Municipal Bond Issuance and Disclosure Practices, by the National Federation of Municipal Analysts (NFMA).

## *f. Website recommendations from a disclosure standpoint*

We reviewed the City's investor website and believe a number of improvements could be made to make it easier for investors to obtain information needed to assess the credit quality of the City's bonds. Although mandatory disclosure filings are now easily accessible on EMMA, investors often want to go beyond the required disclosure, thus, it would be useful for the City to provide in one place all of the information that may be relevant to making a fully informed investment decision. A few suggestions are outlined below, but if we are engaged as disclosure counsel, we would provide a comprehensive review and detailed report with our recommendations.

- Add links to following
  - annual continuing disclosure filings
  - prior offering documents
  - investor presentations
  - rating agency presentations
  - bond authorization documents
  - capital improvement program information
  - swap summary, if applicable
  - rating report archive
- Provide updated financial and economic indicator reports
- Provide updated Debt Management Policy



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- Add links to bond secondary market trading activity on EMMA
- Provide a schedule of when the City expects to provide updated disclosure
- Add prominent and easily accessible links to:
  - most recent disclosure
  - most recent offering document
  - frequently asked questions
  - calendar
- Provide an option to sign up for alerts
- Provide a feedback feature
- Add and improve disclaimers
- Consider providing raw data that investors can use and manipulate for their own analysis, similar to what is available on the robust investor website [www.massbondholder.com](http://www.massbondholder.com).

## *g. Defining 'material' and how questions would be handled regarding 'what should an investor consider material'?*

We view information to be material if, given the totality of the circumstances, a reasonably prudent investor would like to know this information to make an investment decision. Our bond lawyers are also very carefully monitoring the latest SEC actions for any pronouncements on its views of the materiality standard. (For more information, go to <http://www.ballardspahr.com/en/PracticeAreas/Practices/Municipal-Securities-Regulation-Enforcement.aspx>.)

## 8. References

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## 9. Proposed Subcontractors

Ballard Spahr intends to work with Daniel Turner of Turner Law, P.C. and Andre C. Dasent P.C. as described in Appendix G.

## 10. Requested Exceptions to Contract Terms

As previously mutually agreed to edit and approval from the City of Philadelphia's Risk Management Division, Article IX, we would like to propose a modification to section 9.1(d)(1) Limits of Liability: a minimum of \$10,000,000 per claim with a deductible, or self-insured retention not to exceed \$1,000,000.

# RFP Response

## 11. Office of Economic Opportunity

We have historically enjoyed tremendous working relationships with co-counsel firms with whom we have participated on City transactions, either as bond or underwriter's counsel. We appreciate and commend the City's commitment to providing equal opportunity for M/W/DSBE firms, and we are committed to supporting the City in these efforts. As such, we would be happy to work with any such firm appointed as co-bond counsel by the City.

The completed Solicitation for Participation and Commitment Form is attached as **Appendix G**. Additional information on our diversity policy is attached as **Appendix F**.

## 12. Tax and Regulatory Status Clearance Statement

The completed certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement is attached as **Appendix H**.

## 13. Disclosure of Litigation; Disclosure of Administrative Proceedings

Ballard Spahr, like all large law firms, has been the subject of various claims and suits from a variety of parties. To date, all such suits have either been dismissed or settled in the ordinary course, and none has had a material adverse impact on the firm. No court has rendered an adverse judgment against Ballard Spahr. There are administrative matters (i.e., bond audits) in which the accuracy of Ballard Spahr's tax-exemption opinion has been questioned, although no bondholder has had to pay income tax or other liability on account of any opinion we have delivered as bond or tax counsel.

We are not aware of any formal or informal action taken by any bar association, state or federal securities commission, disciplinary board, or other attorney regulatory body against Ballard Spahr or the representatives we have included in this RFP. Ballard Spahr has a General Counsel and has designated one or more Loss Prevention Partners in each of its offices, all of whom have the responsibility to remain current concerning ethics and professional responsibility issues and to provide advice and training related to these issues to other attorneys in the firm. Our professional liability insurance carrier, Attorneys Liability Assurance Society, Ltd. (ALAS), provides an extensive, sophisticated loss prevention program that we believe is unmatched in the industry. Our General Counsel and Loss Prevention Partners work closely with ALAS and with the loss prevention resources that ALAS provides to evaluate and monitor ethical issues that arise in connection with our practice on an ongoing basis.

## 14. Statement of Financial Capacity

Ballard Spahr is owned by the firm's partners and, due to privacy considerations, does not usually release its financial information to non-partners. The firm has been in continuous existence since the late 1880s and is currently ranked as one of the largest law firms in the United States. City access to the firm's audited financial reports can be arranged following the execution of a non-disclosure agreement, which we gladly would provide upon request.

## 15. Local Business Entity or Local Impact Certification

Ballard Spahr believes it has met the Local Business Entity of Local Impact criteria as set forth in the attached Local Business Entity of Local Impact Certification, **Appendix I**.

## 16. Disclosure Requirements

All required forms are attached to our proposal and executed on the procurement website as requested.

## 17. Defaults

Ballard Spahr has no defaults to report.



# RFP Response

## 18. Statement of Anticipated Job Creation

Ballard Spahr does not anticipate the creation of any new jobs as a result of the awarding of this contract. As previously stated, Ballard Spahr has 498 employees in Philadelphia, Pennsylvania. Of that number, 203 are attorneys in multiple legal practice areas, of whom eleven are public finance attorneys and seven employees are public finance paralegals and legal administrative assistants.