



Subject: Replacement Wastewater Treatment Plant – Legal Services to assist with P3 Procurement and Agreement (Private-Public Partnership for Design, Build, Finance, Operate, and Maintain)	
Meeting Date: May 7, 2019	Staff Members: David Powell, City Attorney and Anthony Hooper, Deputy City Manager Departments: City Attorney and City Manager’s Offices
Action Required <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments:
Staff Recommendation: Approve selection of Hawkins, Delafield and Woods to provide specialized legal services for procurement and agreements relating to a replacement wastewater treatment plant.	
Recommended Language for Motion: Move to authorize the City Manager to execute a contract retaining Hawkins, Delafield and Woods to provide legal services for procurement and agreements relating to development and operation of a replacement wastewater treatment plant.	
Project / Issue Relates To: <input type="checkbox"/> Council Goals/Priorities <input type="checkbox"/> Adopted Master Plan(s) <input checked="" type="checkbox"/> Not Applicable	

BACKGROUND

Resolution 18-55, adopted by the City Council on December 18, 2018, authorized the solicitation of statements of qualifications for a “private-public partnership” (P3) procurement for the design, build, finance, operation and maintenance of a wastewater treatment plant to

replace Portland’s existing Tryon Creek Wastewater Treatment Plant. A Request for Qualifications of firms was issued on February 15, 2019. Four offerors submitted Statements of Qualifications by the April 9, 2019 deadline. The Statements of Qualifications are currently being reviewed, with three offerors to be “shortlisted” to receive a Request for Proposal.

To proceed further with the Request for Proposals and ultimately with an agreement for the full design, build, finance, operation and maintenance (DBFOM) of a wastewater treatment plant, specialized P3-focused legal services are advisable.

DISCUSSION

The City Attorney recommends specialized P3 legal services be retained for this project. Legal services are anticipated to be needed in several areas:

- The Request for Proposals will include a term sheet with key provisions for the Pre-Development Agreement;
- A Pre-Development Agreement will be developed based upon comments with the shortlisted Proposers;
- A Development Agreement covering the design, build, finance, and long-term (25-30 year) operation and maintenance of the wastewater treatment plant will then be negotiated with the selected Proposer..

The City’s P3 consultants recommend specialized P3 legal representation for DBFOM procurement and agreements. In addition, staff has contacted owner agencies that have undertaken similar sized P3 procurements. These agencies consistently reported that specialized P3 legal representation, while expensive when viewed in isolation from the overall project cost, is a necessary component of assuring a successful long-term P3 arrangement with a private firm/partnership for a wastewater treatment plant constructed and operated under a DBFOM arrangement.

Staff solicited and received proposals from four nationally recognized law firms that specialize in and have proven experience in DBFOM procurement and agreements. The selection criteria included capabilities and approach of the firm and personnel (35%), experience of key personnel in P3 procurement and agreements (30%), references (25%), and cost (10%). The Selection Evaluation Committee (City Manager Scott Lazenby, City Attorney David Powell, Project Manager / Deputy City Manager Anthony Hooper, Deputy City Attorney Evan Boone, and P3 adviser Jill Jamieson) reviewed the proposals and contacted proposers’ references. The Committee awarded points to each proposer based upon their submissions and interviews of their references:

Proposers	Scoring
Ashurst	71.3 points
Hawkins Delafield & Wood	95 points
Nossaman	78.1 points
Squire Patton & Boggs	56.6 points

The Committee believes that each of the proposers are qualified and have significant P3 experience. Hawkins Delafield & Wood is the preferred and recommended proposer based largely upon the breadth of experience their key personnel have in providing P3 legal representation services for DBFOM procurement of wastewater facilities, compared to other types of projects that the other firms cited, e.g., water treatment, road, rail, lighting, remote metering.

Hawkins Delafield & Wood had the lowest blended hourly rate of \$495.00. Based upon Hawkins Delafield & Wood's estimated number of hours for the three phases of legal services, fees for the specialized P3 legal services are expected to be in the range of:

Phase of Service	Estimated Range of Hours	Estimated Expense based on blended hourly rate
Request for Proposals with Pre-Development Agreement template	200-400 hours	\$ 99,000 - \$198,000
Pre-Development Agreement	150-300 hours	\$ 74,250 - \$148,500
DBFOM Development Agreement (Negotiated with selected DBFOM Developer)	300-500 hours	\$148,500 - \$247,500

All proposers were advised of the selection evaluation committee's recommendation and the City's Intent to Award a Contract upon Council approval. No protests to the Notice of Intent to Award were filed.

FISCAL IMPACT

\$600,000 is budgeted for WWTP legal services in FY 2019-2020; the total fee at the high end of the estimated number of hours is \$594,000.

RECOMMENDATION

Authorize the City Manager to execute a contract retaining Hawkins, Delafield and Woods to provide legal services for procurement and agreements relating to development and operation of a replacement wastewater treatment plant.