CITY OF ATLANTA

DEPARTMENT OF LAW

KEISHA LANCE BOTTOMS
Mayor

SUITE 5000 • CITY HALL
55 TRINITY AVENUE, S.W., ATLANTA, GEORGIA 30303-3520
(404) 546-4100 MAIN

NINA R. HICKSON
City Attorney

SEPTEMBER 13, 2019

TO: Potential Respondents

RE: **BOND COUNSEL POOL RFQ: Addendum No. 2**

DATE: September 13, 2019

Please find below Addendum No. 2 to the above-referenced Request for Qualifications, which is hereby incorporated to the above-referenced project.

ADDENDUM NO. 2

This Addendum No. 2 is incorporated into the Request for Qualifications as follows:

1. **ANSWERS** the following **question(s):**

QUESTION:

a) Per your General Format instructions on page 6, you list a font size and line spacing size. Do you also have a font type that you would prefer we use?

RESPONSE:

No.

QUESTION:

b) Per your General Format instructions on page 6, you request to marketing brochures, special appendices or elaborate graphics be permitted. Do you allow us to use a header and footer with our logo for each page?

RESPONSE:

Yes.

QUESTION:

c) In the body of your email, you state that the RFQ deadline is Monday, September 30, 2019. However, in the Introduction on page 1, paragraph 2, you state that "the RFQ application contained herein does not have a set, one-time deadline for which the potential Bond Counsel may submit Qualifications. Please clarify if the discrepancy.

RESPONSE:

The reference on page 1, paragraph 2, was a scrivener's error. The deadline for response to the RFQ is Monday, September 30, 2019.

QUESTION:

d) On page 11, you list a maximum no of pages for the Contents that we are to provide for the RFQ. However, it is unclear to us if this Contents section covers all of the requested information under the Organization of Proposal on page 6. For example, question 1, 4 and 8 under Organization of Proposal are not covered in the Contents on page 11. What is the page limit for this question and others that are not covered?

RESPONSE:

If a specific page limit is not identified for a question, there is no limit. Notwithstanding, succinct responses would be appreciated.

QUESTION:

e) We were not able to [locate] your Illegal Immigration Affidavit, Conflict Waiver Policy, Engagement Letter and New Matter Form on your website. Could you kindly point us in the right direction so we can obtain and review these documents.

RESPONSE:

With respect to the Illegal Immigration Affidavit, this document is no longer required. With respect to the Conflict Waiver Policy, this is an internal Policy. This policy remains consistent with the State Bar of Georgia's Rules of Professional Conduct. As to the Engagement Letter and New Matter Form, please see the attached documents.

All other pertinent information concerning the Request for Proposals, including the date, time and manner of submission, remains unchanged.

CITY OF ATLANTA
DEPARTMENT OF LAW

GUIDELINES FOR OUTSIDE COUNSEL

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City of Atlanta Department of Law

I. INTRODUCTION

The City of Atlanta Law Department Guidelines for Outside Counsel ("Guidelines") are designed to provide law firms engaged by the City Attorney on behalf of the City, its departments, agencies, commissions, and employees with the requirements for such legal representation. These Guidelines are mandatory for all law firms engaged by the City of Atlanta Law Department. All law firms representing the City are required to adhere to these guidelines, and each such law firm shall ensure that all attorneys and support staff working on City matters are familiar with the requirements set forth herein.

The Law Department is committed to providing top quality legal services to the City. Although that commitment begins with the Office of the City Attorney and the legal professionals who staff that office, the expertise and involvement of outside counsel on particular matters is a useful and necessary supplement. The purpose of the Outside Counsel Policy is to ensure the most strategic and cost-effective use of outside law firms retained by the Law Department. These guidelines set forth the parameters that define the roles and the relationship between the Law Department and outside law firms.

The Guidelines supersede all inconsistent terms and conditions that are part of any current engagement of an outside firm by the City of Atlanta Law Department unless the City Attorney, or designee, specifically agrees in writing to such deviations following the outside firm's receipt of this modification. This policy is not intended to derogate from, replace or remove the obligations and duties which apply to the attorney-client relationship by applicable laws, regulations and professional rules of conduct. It is intended to augment and supplement them.

These Guidelines will be modified from time to time. Changes to the Guidelines will be communicated to the law firms representing the City at the time of the changes. It is the responsibility of each law firm to ensure it is operating under the most current version of the Guidelines.

II. CITY ATTORNEY AUTHORITY

The City Charter, 3-303, and the City Code of Ordinances, § 2-396 *et seq.*, provide that **only** the City Attorney has authority to engage outside counsel on behalf of the City. Therefore, it is essential that outside law firms do not perform work on behalf of the City unless the firm has been engaged by the City Attorney, pursuant to an arrangement consistent with these Guidelines and unless the representation has been memorialized in an engagement letter sent by the City Attorney to the law firm. *[See Attachment A – Sample Engagement Letter].*

III. ORIGINATION AND DOCUMENTATION OF NEW LEGAL MATTERS

A. Procurement of Legal Services by the Law Department

It is the goal of the Law Department to procure legal services that are tailored to the particular legal need that has been identified. The selection of outside counsel will be made according to criteria that are consistent with the overall goals of the City in providing top quality legal work and opportunities for diverse law firms and attorneys to participate in the City's legal representation.

At times, legal services will be procured through a solicitation process. This type of process will typically be used when procuring legal services that are not urgently needed and when the engagement will be of a longer duration.

B. City of Atlanta Contacts

It is not acceptable for any outside law firm, after being retained and/or assigned a particular matter, to accept any legal work, including an expansion or modification of the scope of the engagement, from anyone in the City of Atlanta other than the City Attorney. Only the City Attorney may modify and/or expand the scope of engagement.

C. New Legal Matters

All new matters must be authorized by the City Attorney and documented by completion of a Master Agreement and a Notice of New Matter signed by the Relationship Partner and the City Attorney. [*See Attachment B – Notice of New Matter*] The City Attorney will designate an attorney within the law department ("Responsible Law Department Attorney") to coordinate and manage the overall relationship between the outside law firm (the "Firm") and the City of Atlanta on each new matter. Prior to initiating any work on a new matter, the Responsible Law Department Attorney and the Lead Outside Attorney shall meet and confer on the terms of the engagement: budget, staffing,

fees, expenses, scope of work, settlement authority, alternate dispute resolution, etc. and document on the Notice of New Matter.

Legal Strategy: Prior to initiating any work on the new matter, the Responsible Law Department Attorney and Lead Outside Attorney should coordinate their roles and agree on the most effective legal strategy to handle the new matter. (In some cases, the majority of the work will be performed by the responsible law department attorney with the outside firm acting in the role of a legal consultant or expert. In other cases, the majority of the work will be performed by the outside firm.)

Staffing: Each Firm should designate a Relationship Partner who will be the Law Department's point of contact for management of the overall relationship between the Law Department and the Firm. The Law Department expects that staffing on each matter handled by the Firm will be appropriate for the complexity of the issues presented and the scope and amount of work to be performed. Staffing should be maintained in accordance with the applicable Notice of New Matter. The Firm should designate a Lead Outside Attorney to handle the new matter and coordinate efforts with the Responsible Law Department Attorney. The Lead Outside Attorney on each matter shall be experienced and knowledgeable about the matter and the work to be performed, including the significant issues presented. If additional staff from the Firm is necessary, the Lead Outside Attorney shall identify, in advance, the other lawyers who will be working on the new matter and explain the role of each during the preparation of the Notice of New Matter. The Lead Outside Attorney will be responsible for any additional staffing from his/her firm. (The applicable Notice of New Matter shall set forth the specific attorneys, paralegals, clerks, experts, temporary or contract labor, vendors, etc., who will perform significant work on the new matter. Any significant changes in such personnel shall require the approval of the City Attorney or the Responsible Law Department Attorney.) The Lead Outside Attorney should always be aware of who is performing any significant work on the new matter and shall insure that all work for which the City is being billed is useful and performed in an efficient and ethical manner.

Budget: The terms of the Notice of New Matter will cover the budget items for all transactional matters. In addition to the Notice of New Matter, when the Law Department retains an outside firm to represent the City in a lawsuit brought against the City, a separate Litigation Budget *may* be required. *[See Attachment C - Litigation Budget Form.]*

Billing: Each matter handled by a firm must be invoiced separately. If matters are combined on a single invoice, the invoice will be returned to the firm for correction.

Invoices should be submitted as soon after the end of each calendar month as practical but not later than the 10th of the following month.

All bills for legal services should adhere to the following guidelines:

1) Bills should be submitted to the Law Department's Business Office (Attn: Senior Accounting Manager) for processing, in addition to distribution to the parties listed in paragraph 6 below.

2) The specific Law Department matter name will be identified in the Notice of New Matter form, and this matter name should be used when the bill is submitted. Each matter handled by the firm shall be submitted on a separate invoice.

3) Bills should include a record of all timekeepers on the file and the description of the work should be in sufficient detail to allow the Law Department attorneys to assess the nature and scope of the work performed, while protecting attorney/client privileged information. A format similar to the one described on *Attachment D* [*Required Billing Format*] should be used.

4) Bills should be submitted monthly covering each calendar month's activity. Firms must recognize that the City's budgeting process anticipates the legal expenses and a delay in submitting bills could result in delay in getting the invoice processed or create difficulties with appropriations.

5) At the beginning of the representation, the Lead Outside Attorney should provide to the Law Department the name and contact information for the billing manager in the event we need to contact the billing manager regarding an invoice.

6) The firm shall provide regular invoices, but shall also notify the City Attorney, the Law Department Responsible Attorney and the Law Department Senior Accounting Manager in writing when the accrued Fee amount reaches increments of Twenty-Five Thousand Dollars ($25,000) (i.e. $25,000, $50,000, $75,000, etc.).

Fee Arrangements: The Law Department encourages the use of alternative billing arrangements whenever appropriate for work done by outside counsel. Such alternative billing arrangements could include flat fees for certain aspects of the work; blended rates for all personnel working on the matter; discounts associated with certain aspects of the works; standard government rates comparable to those offered the State of Georgia or other local governments; and similar arrangements.

When the standard hourly billing method is used, the Law Department encourages law firms to consider the nature of public sector representation and adjust their hourly rates to reflect the need to be prudent in the expenditure of public money.

All billing arrangements must be discussed with the Responsible Law Department Attorney and the City Attorney at the time the representation begins. The billing arrangement will be included in the Notice of New Matter signed by the City Attorney.

Expenses: The City will reimburse the Firm for reasonable expenses as follows: The cost of filing fees, messenger and overnight delivery charges will be reimbursed at the actual expense incurred. If a law firm has negotiated within the firm for a flat fee for computer assisted research, it is expected that the firm will not charge the City for that research in addition to the time spent performing the research by the timekeeper. The City will not pay for long distance phone calls (telephone and facsimile) and copying charges, secretarial overtime, library services, temporary employees, and similar expenses that should be included in the law firm's overhead without prior approval by the City Attorney.

The City will reimburse outside counsel for reasonable travel expenses associated with the legal work performed on behalf of the City. All travel must be pre-approved by the Responsible Law Department Attorney, and the law firm representatives should make travel arrangements that are consistent with the prudent use of public funds. Law firms will not be reimbursed for first class air travel, expenses at luxury hotels or similar expenditures. The City also will not pay for time spent traveling unless the attorney was performing work for the City while in route.

Settlement Authority – City Council Approval: The outside firm shall not make any offers, promises or commitments, or accept any offers or notices on behalf of, or purport to bind or obligate the City in any way, unless expressly directed to do so by the City Attorney. No case or claim in the City of Atlanta in excess of $500 may be settled, even by the City Attorney, without the authorization of the Atlanta City Council. Lead Outside Counsel should familiarize him/herself with *Black v. City of Atlanta,* 265 Ga. 425 (1995). Any law firm representing the City should not make any offers of settlement without prior authorization from the Responsible Law Department Attorney. All approved offers of settlement should include information about the necessity of gaining authority to settle from the governing authority of the City. The Court and opposing counsel should be informed that any settlement offer communicated is contingent on such approval.

IV. CONFIDENTIALITY AND PRESERVATION OF PRIVILEGES

A. Privileged Communications and Materials

The outside firm's work product, conclusions and communications will be covered by the attorney-client privilege to the extent provided by applicable law. The outside firm shall do all things reasonably necessary to create and preserve such privileges. The Firm is to maintain the confidentiality of communications, information or documents that are subject to the attorney-client privilege or the work product privilege until such privilege no longer applies.

B. Other Confidential Documents or Information

With respect to communications or materials not covered by the attorney-client privilege or the work product privilege, the outside firm should ensure that any confidential documents, electronic communications and materials, or verbal information that it acquires or prepares in the course of an engagement on any new matter will be maintained in strict confidence and will not be disclosed to any other person without the prior consent of the City of Atlanta Law Department for a period of five (5) years following the termination of the firm's representation of the City with respect to that engagement, or any longer period that may be required under the terms of any applicable confidentiality agreement of which the firm is aware, except as otherwise required by law.

C. Retention of Records by Law Firms/Open Records Requests

The Firm should keep records of matters it handles for the City consistent with the Georgia Rules of Professional Conduct and the firm's internal record retention practices. Law firms should consider that some records it has in its possession, if not covered by attorney/client privilege, work product protection or any other privilege, could be subject to an Open Records request pursuant to Georgia law. O.C.G.A. § 50-18-70, *et seq.* If a law firm receives an Open Records request relating to a City matter, the City Attorney should be contacted immediately.[1]

D. Retention of Documents by the Firm/Brief Bank

Upon request of the City Attorney all documentary materials (including materials in electronic form) provided to the outside firm by the City, together with copies thereof, shall be returned to the City or destroyed in a manner satisfactory to the City in its reasonable discretion (taking into account professionally acceptable technological limitations that may exist on the destruction of materials transmitted electronically), provided that the outside firm may retain a single copy of those documents evidencing the basis for the firm's advice or conduct.

The Law Department has established a database (Brief Bank) of legal opinions, motions, and briefs written by Law Department attorneys and outside counsel. The database contains issues of broader interest to the City or application to the overall enhancement of the professional skills and abilities within the Law Department. Many, if not all, legal opinions, motions, and briefs written by outside counsel will be stored in the Law Department's electronic database.

E. Media Inquiries

Law firms retained by the City Law Department must refrain from responding to media inquiries about the legal work of the City. All requests from the media for comment should immediately be referred to the City Attorney and/or the Responsible Law Department Attorney. If the City Attorney and the Responsible Law Department Attorney are not available, the law firm should contact the Mayor's Communication Office at (404) 330-6558.

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[1] The Open Records Act, O.C.G.A. § 50-18-70 (f), requires a response within three business days.

V. CONFLICTS OF INTEREST

The Firm will take reasonable measures to avoid any conflict of interest related to its representation of the City. Unless the City Attorney has agreed to some other arrangement, the Firm will promptly remedy any conflict that does arise or request the City Attorney waive the conflict.

In addition to conflicts of interest that typically arise in law firms when representing private entities, an additional concern will be taken into account by the City Attorney when a determination is made on whether to grant a waiver of a conflict requested by a firm representing the City. If the request for a waiver relates to a matter of particular importance in the City's initiatives, the Mayor's priorities, or a particularly important public policy issue facing the City, the City Attorney may not agree to a waiver. The City Attorney recognizes that most law firms will have other clients who interact with the City on many levels and many issues. It is the intent of the City Attorney to address conflict waiver requests in a manner that affords maximum flexibility to the firms in representing other clients. However, law firms agreeing to perform work for the City should recognize that such work may at times create an "issue conflict" and preclude the firm from representing other clients on certain public issues. We expect the Firm to inform us in advance before engaging in any activity which might be viewed as, or trigger, a conflict of interest.

In addition, we expect the Firm to investigate and attempt to avoid conflicts of a more philosophic or policy-driven nature where a position taken by the Firm on behalf of another client could compromise the position taken by the City. We expect the Firm to be alert to the potential for such conflicts.

VI. PROFESSIONAL LIABILTY INSURANCE

The City requires the law firms that represent it to carry professional liability insurance with coverage of not less than $5,000,000 per claim and annual aggregate. The policy shall include at least a three (3) year Extended Reporting Provision. The Law Department may request a certificate of insurance to substantiate such coverage.

VII. COMPLIANCE ISSUES

A. Familiarity with the City of Atlanta's Code of Ethics

The Firm should be familiar with the City of Atlanta's Code of Ethics. The Code of Ethics can be viewed on the City of Atlanta's web site at: http://www.atlantaga.gov.

B. Compliance with Laws

The Firm shall comply with all laws relating to or which affect the performance of any services provided by the Firm to the City, and the Firm should not take any action which will cause the City to be in violation of any law.

VIII. PROMOTION OF DIVERSITY

It is the policy of the Law Department to obtain legal services in a manner that is consistent with the City of Atlanta's equal business opportunity policy. All law firms responding to a solicitation for legal services should include a plan for implementing meaningful diversity practices and initiatives in the proposed representation. Selection of outside counsel will be reviewed in light of the City's diversity objectives, with consideration given to the establishment of co-counsel relationships between minority or female and majority-owned firms, the presence of female and minority partners in majority-owned firms, mentor-protégé relationships, and meaningful opportunities for medium, small and sole practitioners to participate in work on behalf of the City.

In addition, the City Attorney expects that any law firm engaged to do work for the City of Atlanta will provide opportunities to minority and female lawyers within the firm to work on City matters and seek opportunities to use minority and female-owned vendors (court reporters, document management companies, etc.) on City matters.

IX. APPENDIX

Attachment A – Sample Engagement Letter (required)

Attachment B – Notice of New Matter (required)

Attachment C – Litigation Budget Format (when requested)

Attachment D - Required Billing Format

Attachment A
Sample Engagement Letter

CITY OF ATLANTA

DEPARTMENT OF LAW

KEISHA LANCE BOTTOMS
MAYOR

SUITE 5000 • CITY HALL TOWER
55 TRINITY AVENUE, S.W., ATLANTA, GEORGIA 30303-3520
(404) 546-4100

NINA R. HICKSON
CITY ATTORNEY

MASTER ENGAGEMENT LETTER

September 20, 2018

VIA EMAIL AND U.S. MAIL

[Name]

Attn:
Email address:
Phone number:

Re:

Dear _____:

This *Engagement Letter* is to confirm that your firm is being retained as outside counsel for the City of Atlanta, in conjunction with the above-referenced matter. Your firm is retained pursuant to the authority granted to the City Attorney in the City of Atlanta Code of Ordinances.

When an outside law firm is first retained by the City Attorney, the firm should designate a relationship partner to serve as principal contact for the outside firm. Since

you have been designated the relationship partner for your firm, this letter is directed to your attention. If you are not the relationship partner, or if another partner will serve in this capacity, please inform me immediately.

The general terms of representation for outside law firms are contained in the *City of Atlanta Department Guidelines for Outside Counsel* enclosed in this letter. The *Guidelines* supersede all inconsistent terms and conditions that are part of the current engagement, unless the City Attorney specifically agrees in writing to such deviations. Please ensure that all personnel in your firm who handle City of Atlanta matters are familiar with them. By undertaking this engagement, you agree to abide by the terms of the *Guidelines*.

We look forward to working with you on specific matters to provide the highest level of legal services for the City of Atlanta.

Sincerely,

Nina R. Hickson
City Attorney

cc: Maecher Bailey, Senior Accounting Manager
Tai White, Business Manager

Attachment B
Notice of New Matter

CITY OF ATLANTA
DEPARTMENT OF LAW

KEISHA LANCE BOTTOMS
MAYOR

SUITE 5000 • CITY HALL TOWER
55 TRINITY AVENUE, S.W., ATLANTA, GEORGIA 30303-3520
(404) 546-4100

JEREMY BERRY
CITY ATTORNEY

NOTICE OF NEW MATTER

DATE:

TO:

RE:

Dear _____:

This notice is to confirm the terms of our arrangement for the above matter:

Summary of Matter: Providing legal assistance to the City of Atlanta in the above-referenced _____matter: _____.

Date of Master Engagement Letter:

This notice is issued under the terms of the Engagement Letter and Outside Counsel Guidelines dated _____.

Staffing:

Principal Client Contact for this Matter:

[Please describe the basis for staffing this matter including the number of attorneys and their seniority. Identify specific individuals.]

Based on your understanding of our requirements, you have proposed to staff the matter as follows: I, Valerie Ross, will be primarily responsible for the work and will supervise the attorneys and other professionals who work on the project including:

- **[Fill in Principal Client Contact Name and Title]**
- **[Fill in Attorney Name and Title]**
- **[Fill in Additional Staff Names and Titles]**

As required by the Outside Counsel Guidelines, any staffing changes must be approved by the Law Department.

Law Department Responsible Attorney:

_____

Proposed Fee Structure: Flat / Hourly Rate _____.

Please see the Outside Counsel Guidelines for further information.

Assumptions for Cost Basis: This firm has expertise in handling issues of this nature. [***Please discuss Time, Staff, and any other known factors.***]

Discounts: 10% Government discount applied to firm's hourly rate or overall rate

Timing and Deadlines:

Anticipated Start Date: _____, 2019.

Anticipated Termination Date: _____, or as determined by the City Attorney

Key Milestones: Initial analysis of the matter and other milestones as determined by the City Attorney

Status Reports: Due weekly or as requested by the City Attorney. Please summarize expectations.

Notice:

The firm shall follow all billing and notice requirements pursuant to the Outside Counsel Guidelines.

In addition to regularly submitting invoices, the firm hereby agrees to notify the City Attorney, the Law Department Responsible Attorney and the Law Department Senior Accounting Manager in writing when the accrued Fee amount reaches increments of Twenty-Five Thousand Dollars ($25,000) (i.e. $25,000, $50,000, $75,000, etc.).

Conflicts:

We ask that you certify (by executing this document) that your firm is not aware of any actual or potential conflict of interest in undertaking the required work for this matter.

Agreement:

You may accept the terms of this agreement by signing and returning this notice.

We look forward to working with you to provide the highest level of legal services to the City of Atlanta.

Sincerely,

NINA R. HICKSON
City Attorney

Accepted:

[NAME] (Date)
Firm's Relationship Partner

For COA Law Department Use Only

Matter Practice Area and Deputy:

Matter Category: Matter Number: [*If applicable*]

Actual Start Date:

Funding Source:

Invoice Approver(s):

Legislative Requirement: Yes [ ] If yes, please provide ordinance number: [*Legislation Number*] No [XX]

Other:

Attachment C – Required Billing Format

SAMPLE

[Date]

_____
City Attorney
City of Atlanta Department of Law
Suite 5000
55 Trinity Avenue
Atlanta, GA 30303

Re: [*Matter Name As Identified In Law Department Records*]

Timekeeper	Hours	Description	Fee
Name	.50	Phone call with Jane Smith (Responsible Law Department Attorney) regarding appeal of condemnation decision	75.00
Name	1.00	Review request for documents and organize documents for production	85.00
Name	.25	Review case strategy with Jane Smith (Responsible Law Department Attorney)	75.00

Messenger Service	Delivery to 11th Circuit Clerk	$30.00

Total Disbursements	$ 30.00
Total Fees	$235.00
Total this Bill	$265.00

Timekeepers	Position	Hourly Rate	10% Discounted Rate
Name	Attorney	$331	$281.70
Name	Paralegal	$144	$129.60