



City of Seattle

## Consultant Contract Cover Page

Place this cover page on top of the contract package, and post package into Summit.  
 Transmit an original Contract with this Cover page to City Clerk.  
 Seattle City Clerk MS: CH-03-10 3<sup>rd</sup> Floor City Hall

Agreement #	/ Amendment #	/ P.O. #
Consultant Legal Business Name	Casey Fitzpatrick Christensen O'Connor Johnson et al.	
Consultant Doing Business As Name		
Contract Title	Legal services to the City of Seattle, acting by and through the City Light Department, including an analysis of two patents owned by the Energy Authority relating to energy optimization	
Execution Date (last signature)	01/24/13	
Contract Expiration	<input checked="" type="checkbox"/> When work is done <input type="checkbox"/> Specified Date	
Department / Division	Law	
Department Contact/Phone	Engel Lee / 206-233-2157	
Contract Type (check one)	<input checked="" type="checkbox"/> Standard (Non-Roster) <input type="checkbox"/> Roster Agreement	
Solicitation Type check one	<input type="checkbox"/> Advertisement <input checked="" type="checkbox"/> Roster (Informal Solicitation or Direct Selection from Roster) <input type="checkbox"/> Sole Source <input type="checkbox"/> Emergency <input type="checkbox"/> Adverse Effect <input type="checkbox"/> Direct Appointment (under \$44,000)	
Amendment Reason check all that apply	<input type="checkbox"/> Time Extension <input type="checkbox"/> Revised Scope of Work <input type="checkbox"/> Revised Payment <input type="checkbox"/> Other:	

Original Contract Amount	\$ 20,000
Total for this Amendment	\$ N/A
Amended Amounts to date	\$ N/A
<b>TOTAL CONTRACT AMOUNT</b>	<b>\$ N/A</b>



# Seattle City Attorney

Peter S. Holmes

COPY RECEIVED

2013 JAN 28 AM 11:24

SEATTLE CITY ATTORNEY

Jean M. Boler  
Civil Division Chief  
206.684.8207  
Jean.Boler@seattle.gov

January 22, 2013

Mr. Casey Fitzpatrick  
Christensen | O'Connor | Johnson | Kindness  
1420 5th Avenue, Suite 2800  
Seattle, WA 98101-2347

Re: Patent Analysis Engagement

Dear Mr. Fitzpatrick:

This letter confirms your Christensen O'Connor Johnson Kindness's engagement to provide legal services to The City of Seattle, acting by and through the City Light Department ("City"). COJK services will include an analysis of two patents owned by The Energy Authority relating to energy optimization as they relate to the City's intent to develop, in conjunction with a third-party vendor, an interface with the Bonneville Power Administration's (BPA) Slice Computer Application (SCA), specifically the Slice Water Routing Simulator (SWRS).

You have proposed a two-phased process, which will include (1) an initial analysis and creation of a Statement of Facts, which will be used as the baseline for the assessment of the patent infringement issues; and (2) either the formation of a non-infringement letter, or alternatively, advice and guidance for how to best develop and deliver the City's interface product/software without violating the TEA patents.

We understand that your billing rate will be no more than \$290 per hour and that Kevan Morgan's rate is \$430 per hour. I understand from past conversations with David Sheldon that the entire scope of the project and analysis will be between \$10,000 and \$20,000. Out-of-pocket expenses will be covered. Your fees and costs will be paid on a monthly basis upon the City's receipt of an itemized bill. We are enclosing for your review and retention a statement of the City's billing and outside counsel procedures. These procedures contain standard language that is required by the City's contracting ordinances, as well as terms required by the City Attorney.

Engel Lee will continue as your primary contact in the City Attorney's office and can be reached at 206-233-2157.

If you accept this arrangement, please sign below and return the original letter to me. Please feel free to contact me if you have questions regarding the nature of this engagement or City procedure. We look forward to continuing working with you.

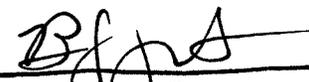
Very truly yours,

PETER S. HOLMES  
Seattle City Attorney

By:   
Jean M. Boler  
Civil Division Chief

Accepted by:   
David Sheldon

Date 1/24/2013

  
B. Casey Fitzpatrick

Date 1/24/2013

**Seattle City Attorney  
Outside Counsel Terms and Billing Procedures  
Attachment A**

**I. Interaction with City**

- A. The City Attorney<sup>1</sup> must be given advance notice of any significant decisions in order to be able to participate fully in making such decisions.
- B. The City Attorney must be provided with advance drafts of all significant documents (policy statements, pleadings, memoranda) in sufficient time to be able to participate fully in decisions regarding such documents.
- C. The City Attorney must routinely receive copies of all other documents, including correspondence and internal legal memoranda.
- D. The City Attorney must fully participate in all deliberations and decisions regarding possible settlement of a case.
- E. The City Attorney must participate in the selection of all consultants or experts. No subcontracting is permitted under this contract without the specific authorization of the City Attorney, and compliance with the relevant provisions of Chapter 20.42 SMC.
- F. Any extensive legal research proposed by outside counsel must be discussed in advance with the City Attorney.
- G. The City Attorney must be advised as soon as reasonably possible of any potential conflicts in representation.

**II. Potential Conflicts of Interest**

- A. Counsel will be deemed to represent the entire City and all its departments, agencies, branches, boards, commissions and offices, unless specifically notified otherwise.

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<sup>1</sup> References in this document to obligations and rights of the City Attorney shall in most cases be made by the Assistant Attorney or other member of the Law Department identified by the City Attorney. Outside counsel may, however, contact the City Attorney directly whenever warranted.

B. In each instance where counsel becomes aware that there may arise, that there is, or there may be an actual or potential conflict of interest, counsel will notify the City Attorney in writing and seek written waivers from the City Attorney as soon as possible. The City Attorney may waive potential conflicts that do not involve the subject matter for which counsel has been engaged, but reserves the right to decline to waive a real or potential conflict in each case. Counsel will not engage in conduct which presents a real or potential conflict of interest as defined for purposes of these Procedures unless the City Attorney waives the conflict or potential conflict.

C. Conflicts of interest include:

1. Conflicts described in the Rules of Professional Conduct;
2. Situations in which counsel or any of its agents or subcontractors participate in or benefit from a transaction upon which the counsel has provided or is providing advice, except for the payments for services as provided in any contract with the City;
3. Situations in which counsel provides advice or participates in any transaction that is, or would appear to a reasonable person to be, in conflict or incompatible with the proper duties of the counsel as provided in its contract, or which would affect, or would appear to a reasonable person to affect, the independent judgment of counsel.
4. Any similar situation which does, or would appear to a reasonable person to, interfere with counsel's ability to fairly and impartially advise the City.

### **III. Billing Procedures for Outside Counsel**

A. Billings by outside counsel must be submitted on a monthly basis and will be paid within thirty (30) days of submittal.

B. Unless otherwise agreed upon in advance in writing, the City will be charged for services rendered on an hourly basis and billings will be reflected in increments of one-quarter of an hour or less.

C. Each billing statement must be set forth for each date services were performed:

- (1) A brief summary of the services provided;

(2) The number of hours, or fractions of hours, spent by each provider;

(3) The hourly rates of each of the providers;

(4) Expenses and disbursements in detail:

(a) Air travel must be approved by the City in advance and is reimbursable at coach rates;

(b) The City must not be charged for courier service or other expedited mail delivery unless the urgency was caused by the City or the City requests the service.

(5) Billings for experts or consultants retained by the outside counsel must be provided in substantially similar format as outlined above.

D. Any changes in outside counsel's fee schedule must be discussed with the City Attorney prior to implementation.

E. Outside Counsel have been retained because of their expertise. The City must not be billed for basic general legal or technical research necessary to educate staff or less experienced attorneys in the firm without advanced City approval.

F. The City must not be billed for any time spent in preparing or reviewing the firm's billings to the City or in internal firm quality control procedures.

G. Unless approved in advance, the City will not reimburse for time spent by more than one attorney attending meetings, witness interviews, depositions, hearings and the like.

H. Outside Counsel will keep accurate records and books for all work provided under this agreement with the City. At the City's request and at the City's cost, Outside Counsel will permit the City to inspect and audit all pertinent books and records of Outside Counsel related to the work performed for and charged to the City, at any and all times deemed necessary by the City,

including up to six years after the final payment or release of withheld amounts has been made under this agreement.

#### **IV. Equal Employment Opportunity and Outreach**

- A. Outside counsel shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Outside counsel shall take affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.
- B. If outside counsel will hire employees for the work under this agreement, outside counsel shall make affirmative efforts to recruit minority and women candidates. Affirmative efforts may include the use of advertisements in publications directed to minority communities and other targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.
- C. Outside counsel shall maintain, for at least 24 months after the expiration or earlier termination of this agreement and permit access to outside counsel's records of employment, employment advertisements, application forms and other pertinent data and records requested by Seattle City Attorney's Office for the purposes of investigation to determine compliance with the requirements of this section.
- D. Outside counsel, by executing this agreement, is affirming its compliance with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this agreement. Any violation of the requirements of the provisions of this section noted in paragraph A, B and C above shall be a material breach of agreement for which the outside counsel may be subject to damages and sanctions provided for by the agreement and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.
- E. The foregoing provisions of this section shall be inserted in all subcontracts for the work covered by this agreement.

#### **V. Nondiscrimination in Employee Benefits**

- A. Compliance with SMC Ch. 20.45: Outside counsel shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which outside counsel is obligated to provide the same or equivalent benefits (“equal benefits”) to its employees with domestic partners as outside counsel provides to its employees with spouses. At the City’s request, outside counsel shall provide complete information and verification of outside counsel’s compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this agreement. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)*
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this section V. shall be a material breach for which the City may:
- (1) Require outside counsel to pay actual damages for each day that outside counsel is in violation of SMC Ch. 20.45 during the term of this agreement; or
  - (2) Terminate the agreement; or
  - (3) Disqualify outside counsel from bidding on or being awarded a City contract for a period of up to five (5) years; or
  - (4) Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.