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 3rd Floor City Hall

Agreement # / **Amendment #** / **P.O. #**	
Consultant Legal Business Name	Elizabeth Thomas K&L Gates LLP
Consultant Doing Business As Name	
Contract Title	Legal advice related to boundary hydroelectric project relicensing
Execution Date (last signature)	12/23/13
Contract Expiration	☑ When work is done ☐ Specified Date
Department / Division	Law
Department Contact/Phone	William Foster / 206-233-2161
Contract Type (check one)	☑ Standard (Non-Roster) ☐ Roster Agreement
Solicitation Type check one	☐ Advertisement ☑ Roster (Informal Solicitation or Direct Selection from Roster) ☐ Sole Source ☐ Emergency ☐ Adverse Effect ☐ Direct Appointment (under $44,000)
Amendment Reason check all that apply	☐ Time Extension ☐ Revised Scope of Work ☐ Revised Payment ☐ Other:

Original Contract Amount	$ 200,000
Total for this Amendment	$ N/A
Amended Amounts to date	$ N/A
TOTAL CONTRACT AMOUNT	**$ N/A**

Seattle City Attorney
Peter S. Holmes

Jean M. Boler
Civil Division Chief
(206) 684-8207
jean.boler@seattle.gov

December 18, 2013

Elizabeth Thomas
K&L Gates LLP
925 Fourth Ave.
Suite 2900
Seattle, WA 98104-1158

Re: Providing Assistance on Boundary Hydroelectric Project Relicensing

Dear Ms. Thomas:

Thank you for your recent email outlining the work you anticipate doing on behalf of the City over the course of the next two years as Seattle City Light (SCL) begins to fulfill the requirements of its new FERC license and the associated settlement agreement. Your firm was selected through a competitive process in 2005 to assist in advising the City on relicensing of the Boundary dam and since that time, you have been lead counsel for the firm on this matter. With the settlement in place, and with FERC's issuance of the license in March 2013, the pace of the legal work has slowed compared to prior years. However, legal work for the project will continue as SCL engages with FERC and the other settling parties in license implementation. You will continue to provide legal support on ancillary issues such as the power assignment agreement with Pend Oreille PUD and developments relating to the TMCL for the Pend Oreille River.

This letter is to confirm that the limit for the cost of your services on the above referenced matters for the years 2014 and 2015 will be $200,000. Your services should not exceed this amount without further authorization from this office. Hourly billing rates for 2014 are as follows:

Elizabeth Thomas	Attorney	$500
Kari L. Vander Stoep	Attorney	$310
Marie E. Quasius	Attorney	$260
Dirk R. Middents	Paralegal	$165

Other timekeepers will include 10 percent discount. For 2015, all billing rates will be discounted 10 percent from your standard rates.

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.

William Foster will continue as your primary contact in the City Attorney's office and may be reached at (206) 233-2161. 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 continued work with you.

Very truly yours,

PETER S. HOLMES
Seattle City Attorney

By: _____
Jean M. Boler
Civil Division Chief

Attachment

Accepted by: _____ 12-23-2013
Signature Date

Elizabeth Thomas
Printed Name

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

As used in this Attachment A, "Outside Counsel" means any individual lawyer, other than an employee of the City of Seattle, or any law firm hired by the Seattle City Attorney to provide legal advice and representation to the City of Seattle and/or officers and employees of the City of Seattle.

I. Interaction with City

A. The City Attorney[1] 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 Seattle Municipal Code.

F. Provisions of this section may be modified to the extent necessary to comply with RPC 1.6 when there is a conflict between an individual employee represented by Outside Counsel and the City. In those circumstances, the City recognizes Outside Counsel's duties under RPC 1.8(f).

II. Potential Conflicts of Interest

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

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

represent individual employees pursuant to SMC 4.64 are deemed to represent both the individual employee and the City for purposes of determining whether a conflict of interest exists.

B. In each instance where Outside Counsel becomes aware that there may arise, that there is, or that there may be an actual or potential conflict of interest, Outside Counsel will promptly notify the City Attorney in writing and seek written waivers from the City Attorney and the individual employee represented pursuant to SMC 4.64 as appropriate under RPC 1.8(f) as soon as possible. The City Attorney may waive potential conflicts that do not involve the subject matter for which Outside Counsel has been engaged, but reserves the right to decline to waive a real or potential conflict in each case. Outside Counsel will not engage in conduct which presents a real or potential conflict of interest unless the City Attorney waives the conflict or potential conflict. The City Attorney will not issue blanket waivers.

C. Conflicts of interest include:

1. Conflicts described in the Rules of Professional Conduct;

2. Situations in which Outside Counsel or any of its agents or subcontractors participate in or benefit from a transaction upon which Outside Counsel has provided or is providing advice, except for payments for Outside Counsel's legal services under this Agreement;

3. Situations in which Outside 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 Outside Counsel as provided in its contract, or which would affect, or would appear to a reasonable person to affect, the independent judgment of Outside Counsel.

4. Any similar situation that interferes with Outside Counsel's ability to fairly and impartially advise the City and its officers or employees, or would appear to a reasonable person to do so.

III. Confidential Communication

All communications relating to the representation of the City and its employees between Outside Counsel and the City, its officers, employees or agents, whether oral or written, and all documentation whether prepared by Outside Counsel or the City shall be considered confidential and shall not be disclosed except by the written consent of the City Attorney and/or an individual employee represented pursuant to SMC 4.64 as appropriate under RPC 1.6.

IV. City Code of Ethics and Professional Conduct

A. The reputation of the City and its officers and employees is of high importance to the City. All counsel representing the City and its officers and employees are expected to maintain high standards of professional conduct and must behave at all times throughout the representation with integrity.

B. Outside Counsel shall comply with all provisions of the Seattle City Code of Ethics (Seattle Municipal Code Title 4 Chapter 16) applicable to Outside Counsel.

C. Outside Counsel shall be mindful of the requirements of SMC 4.16.070(3) in providing any free legal services to individual City employees and should notify the City Attorney in advance of providing any free legal services to individual City employees.

V. 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. Approved out-of-pocket expenses will be reimbursed at cost.

D. Each billing statement must be set forth for each date services were performed and the following:

(1) A brief summary of the services provided specified by task; block billing is not acceptable;

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

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

(4) Any costs or expenses submitted for reimbursement must be verifiable with an invoice or other back-up documentation. Expenses and disbursements must be described in detail and comply with the following:

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

(b) Other travel expense reimbursement will be consistent with the requirements of SMC 4.72.010 governing travel expenses for City employees;

(c) 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;

(d) The City will not pay for computer research provider costs;

(e) The City will not pay costs that should be part of the firm's overhead such as phone calls, copies, courier services and postage;

(5) Billings for experts or consultants retained by Outside Counsel must be provided in substantially similar format as outlined above;

(6) Outside Counsel bills are subject to public disclosure. Outside Counsel should avoid including privileged information in billings that would have to be redacted in the event of a public disclosure request.

E. Any changes in Outside Counsel's fee schedule must be discussed with the City Attorney prior to implementation.

F. Outside Counsel has been retained because of its 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. Any extensive legal research proposed by Outside Counsel must be discussed in advance with the City Attorney and is subject to the City Attorney's approval.

G. 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.

H. 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.

I. 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 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.

VI. Audit

Outside Counsel must keep adequate and accurate records supporting all amounts invoiced to the City, and must maintain such records for at least six years following completion of any work. Outside Counsel shall allow the City Auditor to review and audit all records relating to services provided under the contract with the City.

VII. 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 any work under the agreement, or if counsel will subcontract any work under the agreement (with City approval), 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. By executing an agreement with the City, Outside Counsel affirms that it complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42. Any violation of the requirements of the provisions in this Section 7 shall be a material breach of Agreement for which 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.

VIII. 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 Benefit Program Rules

implementing such requirements, under which 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 compliance with SMC Ch. 20.45. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-4529 or review information at http://cityofseattle.net/contract/equalbenefits/.)*

B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section 8 shall be a material breach of contract for which the City may:
   (1) Require Outside Counsel to pay actual damages for each day that the counsel is in violation of SMC Ch. 20.45 during the term of the contract; or
   (2) Terminate the contract; 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 provided for in SMC Ch. 20.45.

IX. Other Terms

A. Use of Recycled Content Paper: Outside Counsel shall use, whenever practicable, recycled content paper on all documents submitted to the City.

B. Americans with Disabilities Act: Outside Counsel shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this contract.

C. Fair Contracting Practices Ordinance: Outside Counsel shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.