

**CONTRACT FOR LEGAL SERVICES AS BOND COUNSEL BETWEEN THE CITY OF
RAPID CITY AND DORSEY & WHITNEY LLP**

This contract is made and entered into by and between the City of Rapid City, South Dakota, 300 Sixth Street, Rapid City, SD 57701 (the "City"), and Dorsey & Whitney LLP, 50 South Sixth Street, Minneapolis, MN 55402 ("Bond Counsel"), as of _____, 2009.

THE ABOVE-NAMED PARTIES hereby agree as follows:

Section 1. RECITALS AND REPRESENTATIONS.

1.1. The City wishes to retain the services of Bond Counsel to render certain legal services described below.

1.2. Bond Counsel is desirous of performing such services and represents that it is experienced in matters relating to the services described below, is capable of performing them, and that the person executing this contract is authorized to do so.

Section 2. SCOPE OF SERVICES.

2.1. Bond Counsel will perform and provide legal services for the City in connection with public finance and related public law matters.

2.2. The legal services authorized under this contract shall include such legal services that are initiated or requested, either orally or in writing, by the City's Finance Director (the "Representative"), or such other persons as may be designated by the Representative; however, such authorization shall not be necessary if, in the Bond Counsel's judgment, immediate action is required to protect the City's interests.

2.3. In performing legal services authorized under this contract, Bond Counsel's client will be the City, and Bond Counsel will represent the City's interests. Bond Counsel will not represent any other party in matters undertaken hereunder, and it is mutually understood by Bond Counsel and the City that the services to be provided by Bond Counsel as described herein are solely for the benefit of the City.

2.4. Where Bond Counsel is engaged hereunder to render an objective legal opinion with respect to the authorization and issuance of tax-exempt bonds (which term shall include leases and certificates of participation therein and obligations, however denominated, issued in evidence of loans from federal or State of South Dakota agencies), Bond Counsel will: examine applicable law; prepare authorizing and operative resolutions or ordinances for the City, and any other authorizing documents which may be required for particular issues, including election proceedings; prepare leases and trust indentures or similar documents, if required; prepare closing certificates; consult with the City's financial advisor and other parties to the bond financing prior to the issuance of the bonds; review certified proceedings; and undertake such additional duties as Bond Counsel deems necessary to render its approving opinion. Subject to the completion of proceedings to Bond Counsel's satisfaction, Bond Counsel will render its

opinion that: (a) the bonds are valid and binding obligations of the City; and (b) unless the City determines that the bond issue is to be a taxable issue, the interest paid on the bonds will be excluded from gross income for federal income tax purposes (subject to certain limitations that may be expressed in the opinion). Such Bond Counsel opinion will be executed and delivered in written form on the date the bonds are exchanged for their purchase price and will be based on facts and law existing as of such date. Upon delivery of the opinion, Bond Counsel's responsibilities will be concluded with respect to such financing; specifically, but without implied limitation, Bond Counsel does not undertake (unless specifically engaged and requested to do so as provided hereunder) to provide continuing advice to the City or any other party concerning any actions necessary to assure that interest paid on bonds will continue to be excluded from gross income for federal income tax purposes after the date of Bond Counsel's opinion.

2.5. Bond Counsel will assist the City and its financial advisor in the financial planning and structuring of bond issues of the City. Bond Counsel will review the portions of the disclosure document describing the bond documents, the tax status of the bonds and the Bond Counsel opinion. Bond Counsel will not assume or undertake any other responsibility for the preparation of an official statement or any other disclosure document with respect to the issuance of bonds by the City, nor is Bond Counsel responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document.

Section 3. **SERVICES PRIOR TO CONTRACT DATE.** The parties understand that certain legal services, in connection with the subject matter of this contract, may have been rendered by Bond Counsel prior to the date of this contract at the request of the Representative. Such services are payable under this contract.

Section 4. **BOND COUNSEL PERSONNEL.**

4.1. Verlane L. Endorf shall serve as Bond Counsel's representative and shall assume primary responsibility for coordinating all legal services with the Representative. It is understood by the parties that Bond Counsel may assign responsibility to such attorneys or paralegals in its employment as in its judgment is necessary and desirable to efficiently perform the legal services, subject to objection by the Representative.

4.2. Services under this contract shall be performed only by attorneys or paralegals employed by Bond Counsel and no services, including retention of associate counsel, consultants or experts, shall be subcontracted without prior approval of the Representative.

4.3. Bond Counsel represents that it and all attorneys providing legal services under this contract are covered by professional liability insurance adequate for the protection of the City with regard to the services provided.

Section 5. **COMPENSATION.**

5.1. The City agrees to pay Bond Counsel's fees as follows:

A. For certain types of bond financings identified in Attachment A hereto, from proceeds of such bond financings:

According to the fixed fee schedule in Attachment A.

B. For the attorneys and paralegals identified in Attachment B hereto when rendering services hereunder that are not subject to a fixed fee schedule, with prior approval of the Representative:

At a blended hourly rate of \$400 for attorney services and \$200 for paralegal services.

C. For attorneys and paralegals not identified in Attachment B when rendering services hereunder that are not subject to a fixed fee schedule, with prior approval of the Representative:

At the regular hourly rates then in effect at the time the services are provided. Services under this provision will not be undertaken without prior written permission from the Representative.

5.2. In addition to the fees set forth above, the City agrees to reimburse Bond Counsel for its reasonable, out-of-pocket expenses or disbursements incurred in connection with legal services performed hereunder.

Section 6. BILLING PROCEDURE.

6.1. Unless fixed fees are applicable, a statement of services rendered shall be submitted to the Representative for payment upon receipt, which statement shall include: a narrative of the services rendered, the name of the lawyer or paralegal rendering such service, the hourly rate, and the number of hours or partial hours worked in connection with such service; documentation of all reimbursable expenses and disbursements made on behalf of the City; and the total amount chargeable.

6.2. Where fixed fees are applicable, a statement of services rendered shall be submitted upon closing of each bond issue to the Representative for payment upon receipt, which statement shall include: a narrative of the services rendered and the name of the lawyer or paralegal rendering such service; documentation of all reimbursable expenses and disbursements made on behalf of the City; and the total amount chargeable.

Section 7. TERM AND TERMINATION OF CONTRACT.

7.1. The term of this contract is from _____, 2009, to _____, 2012; provided, however, the City may terminate this contract at any time by providing Bond Counsel written notice of such termination at least fifteen (15) days prior to the effective date of such termination. Furthermore, Bond Counsel may terminate this contract for the reasons provided by judicial and professional rules.

7.2. Upon termination Bond Counsel shall furnish to the Representative copies or duplicate originals of all legal documents or memoranda prepared for the City not previously furnished and all work in progress. Such materials may be provided in an electronic form. Bond Counsel may charge a reasonable fee for the cost of copying all documents and the cost of gathering or producing electronic documents.

7.3. Upon termination, Bond Counsel shall be entitled to compensation for all legal services performed and reimbursement for the actual cost of all out-of-pocket expenses and disbursements made under the contract prior to the effective date of the termination.

Section 8. **CITY DATA.** The City, through its Representative, shall cooperate with Bond Counsel to facilitate the performance of legal services without undue delay, and the City shall furnish to Bond Counsel information, data, reports and records of the City which are necessary for this purpose.

Section 9. **FINDINGS CONFIDENTIAL.**

9.1. Any information, data, reports, records, or other materials given to or prepared or assembled by Bond Counsel under this contract shall be kept confidential and Bond Counsel shall not make any of this material available to any individual or organization without prior approval of the Representative.

9.2. If any data on individuals is made available to Bond Counsel by the City pursuant to this contract, Bond Counsel shall maintain any such data in accordance with applicable government data practices laws and regulations.

Section 10. **REPORTS; RECORDS.**

10.1. Copies of all financing documents, memoranda of law, correspondence, and other work products prepared or assembled by Bond Counsel under this contract will be forwarded to the Representative. Bond Counsel may charge a reasonable fee for the cost of copying documents and the cost of gathering or producing electronic documents.

10.2. Bond Counsel will retain files related to bond financings for three years after bond maturity. Bond Counsel will not provide additional notice of file destruction.

Section 11. **CONFLICT OF INTEREST.**

11.1. Bond Counsel will immediately divulge to the Representative any actual or potential conflict of interest with regard to matters with respect to which Bond Counsel is engaged under this contract of which it becomes aware during the term of this contract. The City acknowledges that it is likely that Bond Counsel has represented, from time to time in the past, and will continue to represent, the potential purchaser(s) of the City's bonds (or other obligations) on a variety of legal matters unrelated to Bond Counsel's engagement hereunder. Pursuant to the professional ethics rules governing the conduct of attorneys, these unrelated representations may be "adverse," and Bond Counsel cannot accept representation of a party where that representation would be adverse to the interest of another of its clients unless the

potential adversity has been disclosed to both parties and both parties consent to the representation. The City hereby agrees that, when requested in writing by Bond Counsel, it will not unreasonably withhold its consent to Bond Counsel performing legal services authorized under this contract for the City where the purchaser of the City's bonds (or other obligations) is also a client of Bond Counsel.

11.2. The City hereby agrees that Bond Counsel may accept engagement by its current or future clients whose interests are adverse to the City with respect to matters wholly unrelated to its engagement by the City under this contract; provided, however, that Bond Counsel will not, without prior approval of the City, engage in any administrative proceeding or litigation asserting liability on the part of the City.

IN WITNESS WHEREOF, the City and Bond Counsel have caused this contract to be executed as of the date set forth below.

RAPID CITY, SOUTH DAKOTA

Mayor

Attest:

Finance Officer

DORSEY & WHITNEY LLP

By: _____
Verlane L. Endorf
Its Partner

ATTACHMENT A

FIXED FEE SCHEDULE

TYPE OF FINANCING

ISSUE SIZE

Under \$10 Million:

\$10 Million or Greater:

General Obligation Bonds, including General Obligation Revenue Bonds	\$1.00 per thousand, minimum \$4,000	\$10,000 for the first \$10 million, plus \$0.50 per thousand from \$10 million to \$25 million, plus \$0.25 per thousand thereafter
Revenue Bonds	\$1.50 per thousand, minimum \$6,000	\$15,000 for the first \$10 million, plus \$0.75 per thousand from \$10 million to \$25 million, plus \$0.25 per thousand thereafter
Lease COPs	\$1.00 per thousand, minimum \$7,500	\$10,000 for the first \$10 million, plus \$0.50 per thousand from \$10 million to \$25 million, plus \$0.25 per thousand thereafter
State Revolving Fund Loan	\$1.00 per thousand, minimum \$4,000	\$10,000 for the first \$10 million, plus \$0.25 per thousand thereafter

ATTACHMENT B

ATTORNEYS/PARALEGALS

Verlane L. Endorf, Attorney
Jennifer Hanson, Attorney
Andrea Specht, Attorney
Lenore Aaseng, Paralegal

**City of Rapid City, South Dakota
Bond Counsel Firm listing**

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