

Agenda No.

ORDINANCE NO. **165172**

Title

*Authorize an Agreement with Stoel Rives Boley Jones & Grey for bond counsel services. (Ordinance)

INTRODUCED BY	Filed: MAR 6 1992
MAYOR J.E. BUD CLARK	Barbara Clark Auditor of the City of Portland
NOTED BY COMMISSIONER	
Affairs	
Finance and Administration	<i>Gay Kershner</i> Deputy
Safety	
Utilities	
Works	
BUREAU APPROVAL	
Bureau: Finance & Administration	
Prepared by Date R. Hofland 3/4/92	
Budget Impact Review:	
___ Completed ___ Not Required	
Bureau Head: <i>Stephen C. Bauer</i> Stephen C. Bauer <i>g. Tume</i>	
	For Meeting of:
	Action Taken:
	___ Amended
	___ Passed to Second Reading
	___ Continued to:

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
Consent	Regular			YEAS	NAYS
X		Blumenauer	Blumenauer	✓	
NOTED BY		Bogle	Bogle	✓	
City Attorney		Kafoury	Kafoury	✓	
City Auditor		Lindberg	Lindberg	✓	
City Engineer		Clark	Clark	✓	

ORDINANCE No. 165172

- * Authorize an Agreement with Stoel Rives Boley Jones & Grey for bond counsel services.
(Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. On November 6, 1991, the City passed Ordinance 164780, which authorized an Agreement with Davis Wright Tremaine for bond counsel services.
2. At the time the Ordinance passed there was a possibility that Patrick G. Boylston, the partner at Davis Wright Tremaine with whom the City wished to do business, would leave that firm.
3. The Agreement was signed December 18, 1991, and included a provision that if Mr. Boylston were to leave Davis Wright Tremaine and become associated with a different bond counsel firm acceptable to the City, the City could terminate the Agreement with Davis Wright Tremaine.
4. Mr. Boylston left Davis Wright Tremaine effective December 31, 1991, and has now become associated with Stoel Rives Boley Jones & Grey, a bond counsel firm acceptable to the City.
5. Stoel Rives Boley Jones & Grey is now willing to enter into a contract for bond counsel services under the same terms the City currently has with Davis Wright Tremaine.
6. Stoel Rives Boley Jones & Grey's fee will be paid on an hourly basis assignable to each debt issue or other project upon which they work. Their total fee for services for the Agreement period will not exceed \$130,000 unless amended in accordance with the provisions of their Agreement.
7. Sufficient appropriation authority exists in the Office of Finance and Administration Debt Management Program budget, supported through Interagency Agreements with various City bureaus on whose behalf debt will be issued, to pay costs of this contract not recovered directly from proceeds of debt issues.

NOW, THEREFORE, the Council directs:

- a. The Mayor and Auditor are hereby authorized to execute an Agreement with Stoel Rives Boley Jones & Grey for bond counsel services in substantially the form attached hereto as Exhibit I.
- b. The Mayor and Auditor are hereby authorized to draw and deliver warrants not to exceed \$130,000, chargeable to the Office of Finance and Administration.
- c. The Office of Finance and Administration is hereby directed to notify Davis Wright Tremaine that the City wishes to terminate their Agreement in accordance with section F(5) of that Agreement.

Section 2. The Council declares that an emergency exists in order that there be no delay in obtaining bond counsel services for the City; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, **MAR 11 1992**

Mayor Clark
SCB:RH
January 22, 1992

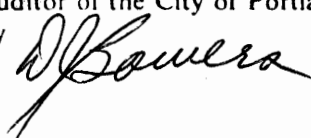
BARBARA CLARK
Auditor of the City of Portland
By  Deputy

EXHIBIT I

AGREEMENT FOR SERVICES

This Agreement for Services (Agreement) is between the City of Portland, Oregon (City) and Stoel Rives Boley Jones & Grey (Contractor).

AGREEMENT:

A. Scope of Contractor Services

The City agrees to employ as, and the Contractor agrees to serve as, bond counsel to the City, performing all ordinary and customary services as bond counsel for City sewer system financings, including special assessment notes and bonds sold to the State Department of Environmental Quality, and the proposed sewer interim financing program during the period of this Agreement. The Project Manager may request additional projects in other areas, subject to acceptance and approval by the Contractor. Services shall include:

1. Preparation of ordinances, indentures, notices of sale, and all other legal documents required to authorize and deliver debt issues.
2. At the request of the City, attendance at meetings held to establish terms of debt issues, or meetings of the City Council held to discuss or authorize debt issues.
3. General review of disclosure documents for debt issues to assure that the formal terms of debt issues are accurately presented, and to assure that language describing the legal authority of the City with respect to debt issues, and the language describing any tax-exemption, is accurate.
4. Compilation and review of transcripts of proceedings by the City to authorize and deliver debt issues.
5. Delivery of an opinion as to the validity of debt issues, and the excludability of interest on debt issues from gross income of holders of the debt under federal and Oregon tax laws.
6. The Contractor shall provide copies of all work products, memos, special analyses, reports and documents produced under this contract to the Project Manager.

B. Scope of City Services

The Project Manager shall identify priorities and time tables for the Contractor and provide information necessary for the Contractor to carry out work described herein.

C. Compensation

The City shall pay the Contractor \$140.00 per hour for time actually worked during the Agreement period. Total compensation for all services under this Agreement shall not exceed \$130,000. Payments shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, expenses and incidentals necessary to perform the work. The Contractor agrees to bill companies directly for economic development revenue bond (EDRB) work, if any, at the same hourly rate, but may bill companies in addition for expenses. EDRB work will be in addition to the total compensation specified above.

The City and the Contractor agree to review the hourly compensation rate under this Agreement during June of each year while it is in effect. The hourly compensation rate may be adjusted, effective July 1, but only with the mutual consent of the City and Contractor. In the event it appears that the maximum amount of compensation specified under this Agreement will be exceeded, the City and the Contractor shall in mutual good faith negotiate a new maximum compensation amount.

D. Billing and Payment Procedure

Contractor may submit invoices to the Project Manager upon completion of each debt transaction, or upon the City's decision to abandon the transaction. The Contractor may submit monthly invoices to the Project Manager for work not connected with debt transactions. All invoices shall include a detail of hours and expenses.

E. Effective and Termination Dates

This agreement shall be effective January 13, 1992 and shall terminate June 30, 1994.

F. Early Termination of Agreement

1. The City and Contractor, by mutual written agreement, may terminate this Agreement at any time.
2. The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
3. Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.
4. Throughout the term of this Agreement Contractor will immediately disclose to the City in writing any potential conflict of interest the Contractor believes may have arisen. The City reserves the right to require actions on the part of Contractor to resolve the situation to the City's satisfaction, or, at the sole discretion of the City, to immediately terminate this Agreement.

G. Payment on Early Termination

1. In the event of termination under Section F(1) or F(5), Early Termination of Agreement, hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.
2. In the event of termination under section F(2), Early Termination of Agreement, hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (1) of this section.
3. In the event of termination under section F(3), Early Termination of Agreement, hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (1) of this section, subject to set off of excess costs, provided for in section H, Remedies.

H. Remedies

1. In the event of termination under section F(3), Early Termination of Agreement, hereof, by the City due to a breach by the Contractor, then the City may complete the work either itself or by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the amount actually paid to the Contractor hereunder plus the remaining unpaid balance of the compensation provided under Section C, Compensation, hereof, then the Contractor shall pay to the City the amount of the excess.
2. The remedies provided to the City under Sections F, Early Termination of Agreement, and H, Remedies, hereof, for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
3. In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and, receipt of payment as provided in Sections F(3), Early Termination of Agreement, and G(2), Payment on Early Termination, hereof.

I. City Project Manager

The City Project Manager shall be Richard Hofland, Debt Manager, Office of Finance and Administration, or such other person as shall be designated by the City. The Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein, and to carry out any other City actions referred to herein.

J. Compliance With Laws

In connection with its activities under this Agreement, the Contractor shall comply with all applicable federal, state, and local laws and regulations. In the event the Contractor provides goods or services to the City in the aggregate in excess of \$2,500.00 per fiscal year, Contractor agrees it has certified with the City's Equal Employment Opportunity certification process.

K. Indemnification for Public Liability and Property Damage

The Contractor shall hold harmless, defend and indemnify the City and the City's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from the Contractor's work or any subcontractor's work under this Agreement.

L. Liability Insurance

1. The Contractor shall maintain public liability and property damage insurance that protects the Contractor and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from the Contractor's work under this Agreement. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damages; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy has been issued to each, but nothing herein shall operate to

L. Liability Insurance (continued)

increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor. If the insurance is cancelled or terminated prior to completion of the Agreement, Contractor shall provide a new policy with the same terms. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

2. The Contractor shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (1). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the City.

M. Indemnification for Professional Liability

The Contractor shall hold harmless, defend and indemnify the City and the City's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from the Contractor's negligent work or any subcontractor's negligent work under this Agreement.

N. Professional Liability Insurance

1. The Contractor shall maintain professional liability insurance, in an amount as required by the Oregon State Bar Association, and not less than the limits of the Oregon Tort Claims Act, applicable to the City, to protect the Contractor from any and all claims, demands, actions, and suits for malpractice arising from Contractor's work under this Agreement. The insurance shall provide that the insurance shall not terminate or be cancelled without sixty (60) days written notice first being given to the City Auditor and the Project Manager.
2. The Contractor shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (1). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain professional liability insurance shall be cause for immediate termination of this Agreement by the City.

O. Workers' Compensation Insurance

1. The Contractor, its subcontractors, if any, and all employees working under this Agreement are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement as Attachment A, and shall be incorporated herein and made a term and part of this Agreement. The Contractor further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.
2. In the event the Contractor's workers' compensation insurance coverage is due to expire during the term of this Agreement, the Contractor agrees to timely renewal of its insurance, either as a carrier-insured employer or a self-insured employer as provided by ORS 656, before its expiration, and the Contractor agrees to provide the City such further certification of insurance as renewals of said insurance occur.

O. Workers' Compensation Insurance (continued)

3. The Contractor agrees to accurately complete the City's *Questionnaire for Workers' Compensation Insurance and Qualification as an Independent Contractor* prior to commencing work under this Agreement. The completed *Questionnaire* is attached to this Agreement as Attachment B and shall remain attached and become a part thereof as if fully copied herein. Any misrepresentation of information on the *Questionnaire* by the Contractor shall constitute a breach of this Agreement. In the event of breach pursuant to this subsection, the City may terminate this Agreement immediately and the notice requirement contained in subsection F(3), Early Termination of Agreement, shall not apply.

P. Subcontracting

The Contractor shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the City. The Contractor shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contractor as specified in this Agreement. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. Contractor agrees that if subcontractors are employed in the performance of this Agreement, Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

Q. Assignment

The Contractor shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the City.

R. Independent Contractor Status

The Contractor is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The Contractor, its subcontractors, and their employees, are not employees of the City and are not eligible for any benefits through the City, including without limitation federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

S. Amendments

The City and the Contractor may amend this Agreement at any time only by written amendment executed by the City and the Contractor.

T. Business License

Contractor shall obtain a City of Portland business license as required by City Code 7.06.010 prior to beginning work under the Agreement. Contractor shall provide a business license number in the space provided at the end of this Agreement.

U. Commencement of Work

Contractor agrees that work being done pursuant to this contract will not be commenced until after Workers' Compensation insurance is obtained, as outlined in Section M, Workers' Compensation Insurance, this Agreement is fully executed by the parties and approved by the City Attorney's Office, and the effective date of this Agreement as specified in Section E, Effective and Termination Dates.

CITY OF PORTLAND

J.E. Bud Clark
Mayor

Date

Barbara Clark
Auditor

Date

STOEL RIVES BOLEY JONES & GREY

Patrick G. Boylston
Patrick G. Boylston
Of Counsel

2/19/92
Date

Edward D. Einowski
Edward D. Einowski
Partner

2/19/92
Date

181592 - 00
Business License Number

93 - 0408771
Tax Identification Number

APPROVED AS TO FORM

Linda M. Neary
City Attorney



CITY OF

PORTLAND, OREGON

CITY OF PORTLAND, OREGON
 QUESTIONNAIRE FOR WORKERS' COMPENSATION INSURANCE
 AND FOR QUALIFICATION AS AN INDEPENDENT
 CONTRACTOR UNDER ORS CHAPTER 762

(To be completed by contractor's representative
 and attached to each contract, purchase order,
 etc., requiring the performance of labor.)

- 1) Contractor's Name Stoel Rives, Boley Jones & Grey (Patrick Boylston)
- 2) Contract Number or Description Legal Services Agreement
- 3) The nature of Contractor's business is Legal Services
- 4) Is Contractor provided any assistance whatsoever in the performance of its business? (For example: volunteer, secretarial, family or bookkeeping help.)
 Yes X No
- 5) Will Contractor use employees or subcontractors in the performance of this contract?
 Yes X No
- 6) If Contractor currently uses the assistance of employees, subcontractors, family members, or any other people, or plans for such assistance in the performance of this contract, please provide the name of Contractor's workers' compensation insurance carrier in the space provided, and attach sufficient proof of workers' compensation insurance coverage to this questionnaire.
Liberty Northwest

(Contractor need not complete the remainder of the questionnaire if sufficient proof of workers' compensation insurance is provided. Contractor must complete the remainder of the questionnaire if sufficient proof of workers' compensation insurance is not provided.)

- 7) If Contractor does not use the assistance of others at the time this contract is let, and if Contractor will not use the assistance of others in the performance of this contract, please circle the category which describes the contractor's business:
- a. Contractor's business is organized as a sole proprietorship (all work will be performed by the individual contractor without the assistance of others - no employees or subcontractors).
 - b. Contractor's business is organized as a partnership not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property (all work will be performed by the partners themselves without the assistance of others - no employees or subcontractors).
 - c. Contractor's business is organized as a corporation (all work will be performed by corporate officers who are also directors of the corporation who have a substantial ownership interest in the corporation).
 - d. Other - describe _____
- 8) Does Contractor know that it is responsible for providing workers' compensation insurance if the Contractor uses the assistance of others in the performance of its work in any manner, or the Contractor plans to use other individuals to assist in the performance of this contract?
Yes _____ No _____
- 9) Is Contractor employed in any other capacity?
Yes _____ No _____
- 10) If so, what is that employment? _____
- 11) What tools or equipment will be necessary for performance of work under this contract? _____
- 12) Who will furnish these tools or equipment? _____
- 13) Did Contractor perform labor or services as an independent contractor last year?
Yes _____ No _____

- 14) If so, did Contractor file federal and state income tax returns in the name of the business or a business schedule C as part of contractor's personal income tax return for last year?
Yes _____ No _____
- 15) Where are Contractor's labor or services primarily carried out? _____
- 16) If Contractor is an individual, at what address does Contractor reside? _____
- 17) If Contractor is a partnership or corporation, where is the residence of the individual who will perform the labor or services under the contract? _____
- 18) To what trade associations does Contractor belong? _____
- 19) Name any commercial advertising Contractor has purchased recently (for example, yellow page listings, newspaper advertising, etc.): _____
- 20) Does Contractor distribute business cards?
Yes _____ No _____
(If so, submit a business card with this questionnaire.)
- 21) What is Contractor's business telephone number? _____
- 22) Under what name is this number listed in the telephone book? _____
- 23) What is Contractor's residential telephone number (or the residential telephone number of the individual who is performing services for Contractor)? _____
- 24) Under what name is this number listed in the telephone book? _____

- 25) List all persons or entities for whom Contractor has performed labor or services as an independent contractor within the previous 12-month period and the duration of all such contracts: _____

- 26) Has Contractor performed all such labor or services described in question 25 above pursuant to written contracts?

Yes _____ No _____

- 27) Does Contractor carry errors and omission insurance?

Yes _____ No _____

- 28) Does Contractor carry liability insurance?

Yes _____ No _____

- 29) Are performance bonds guaranteeing Contractor's work currently in effect?

Yes _____ No _____

- 30) City Project Manager _____

(Name and Title)

THE CONTRACTOR CERTIFIES THAT THE INFORMATION THAT IS SUPPLIED IN THIS QUESTIONNAIRE IS TRUE AND ACCURATE. ANY MISREPRESENTATION OF INFORMATION IN THIS QUESTIONNAIRE BY CONTRACTOR SHALL CONSTITUTE A BREACH OF THE AGREEMENT TO WHICH THIS QUESTIONNAIRE IS AN EXHIBIT.

- 31) Contractor's Representative _____

Lisa B. Schultz
signature

Human Resources Manager

title

- 32) Date 1/31/92

nea\model.ctr\question.vc

Certificate of Insurance

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED.

This is to Certify that

STOEL RIVES BOLEY JONES & GREY
900 S.W. 5TH AVE.
PORTLAND OR 97204

Liberty Northwest
Insurance Corporation
A Liberty Mutual Company
Lloyd Center Tower
825 NE Multnomah Street
Portland, Oregon 97232
(503) 239-5800

is, at the date of the certificate, insured by the Company under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirement, term or condition of any contract or other document with respect to which this certificate may be issued.

TYPE OF POLICY	EXPIRATION DATE	POLICY NUMBER	LIMITS OF LIABILITY	
WORKERS COMPENSATION	7/01/92	WC4-1NC-001701	COVERAGE AFFORDED UNDER W.C. LAW OF FOLLOWING STATES ID, OR	LIMIT OF LIABILITY - COVERAGE B B.I. by Accident \$100,000 Each Accident B.I. by Disease \$500,000 Policy Limit B.I. by Disease \$100,000 Each Employee
			MARITIME COVERAGE-FOLLOWING STATES	LIMIT OF LIAB.-MARITIME COVERAGE
GENERAL LIABILITY Commercial General <input type="checkbox"/> Liability (Occurrence) Owner's and <input type="checkbox"/> Contractor's Protective <input type="checkbox"/> <input type="checkbox"/>			General Aggregate Products Comp/DPS Aggregate Personal & Advertising Injury Each Occurrence Fire Damage (Any one fire) Medical Expense (Any one person)	\$ \$ \$ \$ \$ \$
AUTOMOBILE LIABILITY <input type="checkbox"/> Any Auto <input type="checkbox"/> All owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-owned Autos <input type="checkbox"/> Garage Liability <input type="checkbox"/>			CSL Bodily Injury (Per Person) Bodily Injury (Per Accident) Property Damage	\$ \$ \$ \$
OTHER				
LOCATION(S) OF OPERATIONS & JOB # (IF APPLICABLE)			DESCRIPTION OF OPERATIONS	
CANCELLATION:	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, OR REPRESENTATIVES.			

MAILED TO: CITY OF PORTLAND
PORT DEVELOPMENT COMMISSION
1120 SW 5TH STE 113
PORTLAND OR 97204

22

See Freeman
AUTHORIZED REPRESENTATIVE

11/27/91 jg
DATE ISSUED

Portland
OFFICE

*Copy of Certificate of Insurance already on file with
City of Portland.*