

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between **the Lexington-Fayette Urban County Government**, an urban county government, 200 East Main Street, Lexington, Kentucky, Ohio 40507 (“Urban County Government”), and **Dinsmore & Shohl LLP**, 255 East Fifth Street, Suite 1900 Cincinnati, Ohio 45202 (“Law Firm”).

### WITNESSETH:

**WHEREAS**, the Urban County Government from time to time issues municipal debt obligations, including, but not limited to, general obligation bonds and revenue bonds (“Bonds”), and employs various economic development financing tools; and

**WHEREAS**, the Urban County Government wishes to retain the professional services of the Law Firm to serve as counsel on behalf of the Urban County Government in connection with the issuance of Bonds (the “Bond Matters”) and in its utilization of various economic development financing tools (the “Economic Development Matters”); and

**WHEREAS**, the Law Firm has specific knowledge, experience, and expertise with respect to (i) the issuance of municipal bonds, which knowledge, experience and expertise is relevant to the Law Firm’s services to the Urban County Government with respect to the Bond Matters, and (ii) municipal economic development finance, which knowledge, experience, and expertise is relevant to the Law Firm’s services to the Urban County Government with respect to the Economic Development Matters; and

**WHEREAS**, the Urban County Government wishes to engage the professional services of the Law Firm, and the Law Firm is willing to enter into this Agreement upon the terms and conditions set forth herein; and

**WHEREAS**, the Law Firm, by reason of the training, knowledge, reputation, and experience of its attorneys, particularly in providing expert legal services concerning matters regarding municipal bonds and economic development finance, is especially qualified to provide such professional services to the Urban County Government;

NOW, THEREFORE, the Urban County Government and Law Firm mutually agree as follows:

**SECTION 1. Scope of Services**

The Law Firm agrees to perform and carry out in a manner satisfactory to the Commissioner of Finance including advice, representation, and other activities with respect to the Bond Matters and Economic Development Matters. The Law Firm's services will be coordinated with the Commissioner of Finance, whose requests for such services with respect to specific projects will be described more particularly in written requests for services in the form of **Exhibit A** (*Form of Request for Services*) attached hereto. If the Urban County Government requests legal services with respect to the Bond Matters or Economic Development Matters in a form other than that provided in **Exhibit A**, such nonconformance shall not constitute a default on the part of the Urban County Government or a waiver of the Law Firm's obligations hereunder, either with respect to such requested services or otherwise.

**SECTION 2. Compensation and Method of Payment**

**2.1 Compensation**

All fees payable hereunder shall be determined as a percentage of the aggregate face amount of the specific Bonds with respect to which the Law Firm is advising the Urban County Government in a particular instance. Unless as otherwise provided in an ordinance authorizing series of bonds, the applicable percentage will be set forth in the Urban County Government's request for services pertaining to such matter. No other compensation of any kind, including, but not limited to fringe benefits or overhead, shall be paid by the Urban County Government.

**2.2 Method of Payment**

The Urban County Government will make payments or cause to make payments as set forth in Section 2.1 upon submission of an invoice by the Law Firm.

**SECTION 3. Term**

The term of this Agreement shall commence on \_\_\_\_\_, 2015, through \_\_\_\_\_ 2019 and shall continue through until this Agreement is otherwise terminated, or amended, in accordance with the terms herein.

**SECTION 4. Equal Employment Opportunity**

This Agreement is subject to the provisions of the Equal Employment Opportunity Program of the Urban County Government. The Law Firm agrees to comply with the provisions of such program.

**SECTION 5. Subcontracting**

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the Urban County Government. Any work or

services subcontracted hereunder shall be specified by written contract and shall be made expressly subject to each provision of this Agreement.

**SECTION 6. Assignment**

The Law Firm shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written consent of the Urban County Government.

**SECTION 7. Compliance with Laws and Policies**

In the performance of services under this Agreement, the Law Firm shall comply with all applicable statutes, ordinances, regulations and rules of the Federal Government, the Commonwealth of Kentucky and the Lexington-Fayette Urban County Government.

**SECTION 8. Conflict of Interest**

The Urban County Government acknowledges that the Law Firm represents clients on matters that are or may be adverse to the Urban County Government. It is agreed that the Law Firm reserves the right to continue to represent or to undertake to represent existing or new clients in any matter that is not substantially related to the Law Firm's work for the Urban County Government covered by this Agreement (or other applicable agreements) even if the interests of such clients in those other matters are directly adverse to the Urban County Government, including litigation in which the Urban County Government or its officers or related entities are parties. The Law Firm agrees, however, that the prospective consent to conflicting representation reflected in the preceding sentence shall not apply in any instance where as the result of the Law Firm's representation of the Urban County Government, the Law Firm has obtained sensitive, proprietary or otherwise confidential information that, if known to any such

other client of the Law Firm, could be used in any such other matter by such client to the material disadvantage of the Urban County Government and/or any of its individual officers or the entities represented by those officers or agents.

The Law Firm consents to alert the Urban County Government as soon as it becomes aware of new or potential matters in order to give the Urban County Government the opportunity to waive any potential conflict of interest. However, should the Urban County Government refuse to waive a conflict of interest to allow the Law Firm to represent another client in a matter adverse to the Urban County Government, the Urban County Government agrees to immediately terminate this Agreement and the Law Firm's representation of the Urban County Government under this Agreement so that the Law Firm is free to undertake such other matters, subject only to the restrictions designated herein.

The Law Firm agrees that for one year after the conclusion of this Agreement, it will not represent any party in a matter which would (i) be adverse to the Urban County Government, and (ii) be related to the subject matter at issue in this Agreement. The Urban County Government agrees, in turn, that it will not move to disqualify the Law Firm, solely by reason of this Agreement, from representing clients in any such matters adverse to the Urban County Government undertaken after that one year.

No officer, employee, or agent of the Urban County Government who exercises any functions or responsibilities in connection with the planning and administration of the services hereunder, nor any immediate family member, close business associate, or organization which is about to employ any such person, shall have any personal

financial interest, direct or indirect, in the Law Firm or in this Agreement and the Law Firm shall take appropriate steps to assure compliance.

**SECTION 9. Reports, Information and Audits**

The Law Firm, at such times and in such form as the Urban County Government may require, shall furnish the Urban County Government such reports as may be requested pertaining to the work or services undertaken pursuant to this Agreement, and any other matters covered by this Agreement. The Law Firm shall retain all financial and administrative records applicable to this Agreement and the work performed hereunder for a period of three (3) years after the expiration or termination of this Agreement, and shall permit the Urban County Government or any of its representatives or auditors access to such records.

**SECTION 10. Confidentiality**

The Law Firm and its agents and employees will keep and retain any and all information and records generated under this Agreement in the strictest confidence, regarding all such matters as subject to attorney-client privilege to the fullest extent allowed by law, and will neither use such information or records, nor disclose such information or records to anyone without the explicit written permission of the Urban County Government. The terms of this Section 11 shall survive the termination of this Agreement.

**SECTION 11. Termination**

The Urban County Government may terminate this Agreement after not less than fifteen (15) days written notice to the Law Firm. If this Agreement is terminated by the Urban County Government other than for default by the Law Firm, the Law Firm will be

paid for services performed up to the effective date of termination upon satisfactory review of the Commissioner of Finance of the billed services.

**SECTION 12. Independent Contractor**

The Law Firm shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Urban County Government. The Law Firm shall have the exclusive right to control the details of the services and work performed hereunder and all persons performing the same, and the Law Firm shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between the Urban County Government and the Law Firm. No person performing any of the work or services described hereunder shall be entitled to any benefits available or granted to employees of the Urban County Government.

**SECTION 13. Notices**

All notices required or contemplated by this Agreement shall be personally served or sent by certified mail, addressed to the parties as follows (or to such other address as either party may direct by notice in accordance with this section):

*To Lexington-Fayette Urban County Government:*

Bill O'Mara  
Department of Finance  
200 East Main Street, FL 2  
Lexington KY 40507-1310

*To Law Firm:*

John Merchant  
Dinsmore & Shohl LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

**SECTION 14. Kentucky Law to Govern**

This Agreement is entered into and is to be performed in the Commonwealth of Kentucky. The law of the Commonwealth of Kentucky, without regard to conflicts of law principles that would give effect to the laws of any state other than the Commonwealth of Kentucky, shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

**SECTION 15. Amendment**

This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto.

**SECTION 16. Entirety**

This Agreement and the Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

**SECTION 17. Severability**

This Agreement shall be severable, if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

**SECTION 18. Forum Selection**

The Law Firm and its successors and assigns acknowledge and agree that all state courts of record sitting in Fayette County, Kentucky, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment or attachment thereto, including any duty owed by the Law Firm to the Urban County Government in connection therewith.



**SECTION 19. Ownership of Property**

The Law Firm agrees that at the expiration or in the event of any termination of this Agreement that any memoranda, maps, drawings, working papers, reports, and other similar documents produced in connection with this Agreement shall become the property of the Urban County Government and the Law Firm shall promptly deliver such items to the Urban County Government.

**SECTION 20. Certification as to Non-Debarment**

The Law Firm certifies as of the date of this Agreement that neither it nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Bond Matters or Economic Development Matters covered by this Agreement. The certification in the preceding sentence shall be deemed re-made by the Law Firm as of any date on which the Law Firm performs services for the Urban County Government under this Agreement. The Law Firm acknowledges and agrees that if it or its principals are presently debarred then it shall not be entitled to compensation under this Agreement and that it shall promptly return to the Urban County Government any funds received pursuant to this Agreement. In such event, any materials received from the Urban County Government pursuant to this Agreement shall be retained as liquidated damages.

**SECTION 21. Contractor's Insurance and Indemnification**

- a) Workers' Compensation: The Law Firm shall secure and maintain such insurance as will protect the Law Firm from claims under the Workers' Compensation Laws.

- b) Professional Liability Insurance: The Law Firm shall secure and maintain such professional liability insurance as will protect the Law Firm from claims for malpractice which may arise from the performance of the Law Firm's services under this Agreement, with a combined single limit in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence.

**SECTION 22. Non-Performance**

If, through any cause, the Law Firm shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Law Firm shall violate any of the covenants or agreements of this Agreement, the Urban County Government shall have the right to terminate this Agreement by giving written notice to the Law Firm specifying the effective date of the termination, at least five (5) days before such effective date. In such event, all finished or unfinished documents, data, studies, reports, and/or information prepared by the Law Firm under this Agreement shall, at the option of the Urban County Government, become the Urban County Government's property, and the Law Firm shall be entitled to receive equitable compensation for any work satisfactorily completed at the date of termination.

Any periodic payments from the Urban County Government specified in this Agreement will be contingent upon performance of contractual obligations to date, including the proper receipt of supporting receipts, invoices, reports, statements, or any other supporting information as required by the Urban County Government in this Agreement. Failure to satisfactorily meet any one of the Agreement obligations by the Law Firm may result in the Urban County Government not approving periodic payments to the Law Firm and/or filing liens as may be necessary against the Law Firm's assets

or future assets, until the Law Firm satisfactorily fulfills its obligations under the Agreement or satisfactorily reimburses the Urban County Government for any prior payments. The Urban County Government also reserves the right to seek any other legal or financial remedies to which it may be entitled in connection with a default by the Law Firm under this Agreement. The Urban County Government also reserves the right in the event of non-performance of this Agreement to prohibit any future or limited contractual relationships with the Law Firm either directly or indirectly.

If the Law Firm terminates this Agreement after the work has begun, the Urban County Government shall not be required to compensate the Law Firm for services/work not fully completed.

**SECTION 23.      Waiver**

This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

RECOMMENDED BY:

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

\_\_\_\_\_  
Bill O'Mara, Commissioner of Finance

By: \_\_\_\_\_  
Jim Gray  
Mayor

APPROVED BY CONTRACT COMPLIANCE:

\_\_\_\_\_  
Contract Compliance Officer

APPROVED AS TO FORM:

DINSMORE & SHOHL LLP  
By: \_\_\_\_\_  
John C. Merchant  
Partner

\_\_\_\_\_  
Department of Law

Law Firm Federal Tax ID Number:

31-0263070

**Exhibit A**

Form of Request for Services

**Request for Services**

\_\_\_\_\_ 2015 through \_\_\_\_\_ 2019

John Merchant  
Dinsmore & Shohl LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

Dear Mr. Merchant:

Pursuant to that certain Professional Services Agreement (the "Agreement") between the Lexington-Fayette Urban County Government and Dinsmore & Shohl LLP (the "Law Firm") dated \_\_\_\_\_ 2015 through \_\_\_\_\_ 2019, the Urban County Government hereby requests that the following legal services be performed:

**Description of Requested Services:** Bond Counsel for general obligation bonds

**Fees:** Unless as otherwise provided in an ordinance authorizing series of bonds, a fee of \$1.10 per \$1,000 bond which includes copying, faxing, mailing, telephone, travel and all out-of-pocket expenses (with the exception of transcripts) and includes the fee as dissemination agent with respect to your continuing disclosure obligations. This is exclusive of the advertising expenses for publication of the Notice of Sale in *The Bond Buyer*, *Courier-Journal* and *Herald Leader*, which are customarily paid as a separate expense by the Government.

**Description of Requested Services:** Bond Counsel for sewer bonds

**Fees:** Unless as otherwise provided in an ordinance authorizing series of bonds, a fee of \$1.50 per \$1,000 bond which includes copying, faxing, mailing, telephone, travel and all out-of-pocket expenses (with the exception of transcripts) and includes the fee as dissemination agent with respect to your continuing disclosure obligations. This is exclusive of the advertising expenses for publication of the Notice of Sale in *The Bond Buyer*, *Courier-Journal* and *Herald Leader*, which are customarily paid as a separate expense by the Government.

**Primary Contact(s) for the Requested Services:** John C. Merchant

Sincerely,

\_\_\_\_\_  
Jim Gray  
Mayor  
Lexington-Fayette Urban County Government

Acknowledged by:   
\_\_\_\_\_  
John C. Merchant  
Dinsmore & Shohl LLP

Cc: Commissioner of Finance