



# FUNK & BOLTON

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June 1, 2009

Robert W. Oliphant, Treasurer  
Town of La Plata  
305 Queen Anne Street  
PO Box 2268  
La Plata, Maryland 20646

Re: Bond Counsel Services

Dear Bob:

Thank you for giving Funk & Bolton, P.A. ("Funk & Bolton" or the "firm") an opportunity to submit a proposal to serve as bond counsel to Town of La Plata (the "Town") for certain contemplated financings, specifically (i) a Maryland Water Quality Financing Administration ("MWQFA") loan, (ii) a general obligation borrowing by the Town for its own purposes, and (iii) a special taxing district financing.

Over the years Funk & Bolton attorneys have served as bond counsel to a number of Maryland counties and municipal corporations for MWQFA loans. These borrowers include Caroline County, Kent County, Baltimore City (multiple loans), Boonsboro, Cambridge, Centreville, Chesapeake Beach, Chestertown (multiple loans), Clear Spring (multiple loans), Cumberland (multiple loans), Fruitland (multiple loans), Funkstown, Hagerstown (multiple loans), Hampstead, Hancock, Leonardtown, Mountain Lake Park, New Windsor, North Beach, North East (multiple loans), Oakland, Salisbury (multiple loans) and Willards. The firm is currently serving as bond counsel to Boonsboro and Salisbury for MWQFA loans that are scheduled to close in 2009. In the past five years alone, Funk & Bolton has served as bond counsel for over 25 separate MWQFA loans. We were recently engaged to serve as MWQFA bond counsel to Howard County under a multi-year contract.

In addition, the firm serves as bond counsel to Wicomico and Caroline counties and was recently chosen to serve as bond counsel to Dorchester County for a particular general obligation financing and as bond counsel to Washington County for a multi-year term. Over the years we have served as bond counsel to both Kent County and Prince George's County for various general obligation, certificates of participation and other financings.

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The firm is bond counsel to a number of Maryland municipal corporations, including Bladensburg, Cambridge, Chesapeake Beach, Chestertown, Cheverly, Clear Spring, College Park, Cumberland, Fruitland, Funkstown, Hagerstown, Hampstead, Hyattsville, Millington, New Windsor, North Beach, Oakland, Rock Hall, Salisbury, St. Michaels and Willards, and has been engaged to serve as bond counsel to Boonsboro, Bowie, Greensboro, Keedysville, Smithsburg and Williamsport in connection with general obligation bond issues that have not yet closed. We have in the past provided public finance advice and counsel to Chesapeake City.

The firm has served as bond counsel to Prince George's County and to Cumberland, Frostburg, Hyattsville and Salisbury (two separate issues) for tax increment financing and/or special taxing district bond issues. In addition, the firm has served as trustee's counsel for six tax increment financing/special taxing district bond issues, including all five such bond issues by Prince George's County for various portions of the National Harbor project. Several of the tax increment financing/special taxing district bond issues for which we served as bond counsel included a pledge of incremental tax revenues by the county in which the issuing municipal corporation was located. (The Tax Increment Financing Act permits a county or municipal corporation that is not the bond issuer to pledge its incremental tax revenues to support debt service and other costs.)

The tax increment financing/special taxing district issues for which we served as bond counsel have included limited public offerings to sophisticated investors, private placements with banks and, in one particular case, a private placement with the developer in question, with mechanics built into the bond documents for conversion and re-offering of the bonds on either a tax-exempt or taxable basis to sophisticated investors at a later date if development approvals and status support such a conversion.

In addition, there are three tax increment financing and/or special taxing district bond deals in the works for which the firm has been engaged to serve as bond counsel, and the firm has also provided bond counsel advice in connection with a proposed fourth tax increment financing bond issue. All four of these issues have been delayed due to economic conditions. Just recently the firm was appointed tax increment financing/special taxing district bond counsel to Howard County for a three-year term (with three additional one-year renewal terms at that county's option).

The firm is included in the *Bar Register of Preeminent Lawyers*, which lists firms nationwide to which Martindale-Hubbell has extended the highest rating ("AV") on legal ability and general ethical standards.

Funk & Bolton is recognized as Sole Bond Counsel in the Municipal Bond Attorneys section of *The Bond Buyer's Municipal Marketplace*® (commonly referred to as the "Red Book").

For each financing it is contemplated that I will provide the bulk of the bond counsel services. I may utilize the services of my colleague, Victor K. ("Vic") Tervala to prepare initial

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drafts of documents. In the event the firm hires a public finance paralegal, I will use the services of such paralegal to gather information and prepare initial drafts of closing documents. Vic's and my biographical information and experience are detailed on the firm's website: [www.fblaw.com](http://www.fblaw.com).

(i) MWQFA LOAN

You had indicated that the Town anticipates receiving an approximately \$6 million loan from MWQFA, and that such loan is available due to stimulus moneys. MWQFA loans are evidenced by a general obligation bond issued by the borrower, in this case the Town, to MWQFA, even if the borrower intends to pay debt service in the first instance from system revenues or other available moneys.

My notes from our May 21, 2009 conversation do not indicate whether interest on the loan will be taxable or tax-exempt. Depending on a borrower's status and the source of funding, MWQFA determines whether to make a loan on a tax-exempt or taxable basis and whether all or any portion of the loan will be subject to forgiveness (forgivable loans are treated as taxable for federal income tax purposes).

When a borrower obtains a tax-exempt loan from MWQFA, MWQFA requires the borrower to execute and deliver a Loan Proceeds Questionnaire and Certificate and, in connection with that document and the Tax and Section 148 Certificate we require the borrower to execute and deliver, we undertake certain tax due diligence. Issuance of a tax-exempt bond also requires the borrower to execute a Form 8038-G to be filed with the Internal Revenue Service.

MWQFA loans are structured as draw-down loans and, for a tax-exempt MWQFA loan, a borrower needs to have (i) paid out the lesser of \$50,000 and 5% of the loan amount in project costs, (ii) currently due and payable project invoices in hand equating to the lesser of \$50,000 and 5% of the loan amount, or (iii) some combination of (i) and (ii) equaling the lesser of \$50,000 and 5% of the loan amount, before it can actually "close" on the loan (and on the loan closing date, the borrower makes a draw reimbursing or paying such specified amount of project costs). For a loan of less than \$1,000,000, the target amount is 5% of the loan. For a loan of \$1,000,000 or more, \$50,000 is the required amount. Only project costs that a borrower intends to reimburse from the loan qualify for purposes of these calculations. In addition, such project expenditures must have been (i) capital expenditures and (ii) originally paid no more than 60 days prior to the date any declaration of official intent resolution or the ordinance authorizing the bonds became effective. Alternatively, some or all of such project expenditures (up to 20% of the final principal amount of a tax-exempt bond) could qualify for reimbursement under the preliminary expenditures exception of the reimbursement regulations if they were made more than 60 days prior to the effective date of any declaration of official intent resolution or the bond ordinance. Qualifying preliminary expenditures must be capital expenditures and not involve land acquisition or activities preparatory to construction (such as site grading). Eligible



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preliminary expenditures include design, architectural or engineering fees, bond issuance costs and the costs of feasibility studies or environmental studies (but note that planning and design fees may not qualify for funding from an MWQFA loan if the borrower does not comply with certain procurement requirements).

You indicated during our May 21<sup>st</sup> conversation that the Town is contemplating combining an MWQFA loan with a special taxing district. For purposes of this proposal, I am assuming that the price quotation you want for an MWQFA loan does NOT involve the contemporaneous establishment of a special taxing district (whether or not bonds are to be issued with respect to such special taxing district).

As bond counsel for an MWQFA loan, our services include: preparation of the declaration of official intent resolution relating to the borrower's intention to reimburse prior project expenditures from bond proceeds (when a bond is issued on a tax-exempt basis); preparation of an authorizing ordinance and, if applicable, resolution (depending on the borrower's charter requirements), and all other MWQFA transaction legal documents and closing certificates, including the form of fair summary of an ordinance for publication (if required by a borrower's charter), the General Certificate of the Borrower (in the form required by MWQFA), and a letter authorizing Funk & Bolton personnel to attend closing on behalf of the borrower; for tax-exempt bonds, preparation of a Tax and Section 148 Certificate and a Form 8038-G (which is filed with the IRS); delivery of an approving legal opinion and, if applicable, a tax opinion; providing all necessary tax advice, where applicable; for a tax-exempt bond, preparation of the Loan Proceeds Questionnaire and Certificate required by MWQFA; and generally providing all other customary bond counsel services for an MWQFA loan.

MWQFA mandates that certain specific opinions be delivered at closing, but as to certain of those opinions MWQFA does not care whether bond counsel or local counsel gives the same. In situations where we are not already local counsel to a borrower, we require that the borrower's local counsel deliver an opinion at the loan closing, addressed to MWQFA and MWQFA's bond counsel, as to certain project-specific matters (generally to the effect that all necessary approvals, licenses and permits required to date to own, construct and operate the project have been acquired, that the contemplated transaction does not constitute a breach or default under any existing documents or rulings to which the borrower is a party or subject, and that there is no pending or threatened litigation that could materially affect the borrower's ability to perform its obligations with respect to the loan). It has been our practice to require that local counsel deliver such opinions because it has knowledge as to litigation and other general matters and typically can undertake the necessary due diligence more cheaply than bond counsel can.

Our practice for any MWQFA loan is to charge our customary hourly rates, subject to an agreed-upon cap, plus out-of-pocket disbursements. My current hourly rate is \$400.00/hour and Vic's current hourly rate is \$275.00/hour. Billing rates are subject to review and increase as of each January 1, the start of the firm's fiscal year.



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The only out-of-pocket expenses the firm charges back to clients (at actual cost) are: operator-placed multi-party conference calls, hand delivery and overnight delivery charges, publishing, recording and filing fees, costs to obtain information or materials from outside vendors (such as UCC financing statement and judgment and tax lien searches), parking and tolls (but not mileage), off-site copying charges (when bulk copies are necessary) and the cost of producing hard-bound or CD-based transcripts of closing documents. Funk & Bolton does not charge for local or long distance telephone calls (except for operator-assisted conference calls), facsimile transmissions, in-office photocopying, secretarial overtime, computer research, postage or the materials to create soft-bound transcripts. The only types of expenses the firm typically incurs for an MWQFA loan are FedEx and messenger charges.

Our quoted compensation for an MWQFA loan in the succeeding paragraphs assumes the following: (i) subject to the last page of this letter, we will not need to attend any Council meetings or working group meetings in person (we will provide Town officials and the Town Attorney with a summary of any bond ordinance or resolution to assist them in presenting the same to the Council), (ii) the financed improvements will be owned by the Town and operated by Town employees, (iii) for any borrowing from MWQFA, the Town will close on all funding from such source at the same time, (iv) the original bond ordinance passed contains sufficient bonding authority and will not need to be supplemented at a later date for increased borrowing capacity, (v) the Town will not need to obtain interim borrowing in anticipation of the MWQFA loan, and (vi) the MWQFA loan closes by December 31, 2011.

Assuming MWQFA is able to make a loan to the Town on a taxable basis (whether or not any portion of the loan is subject to forgiveness), we propose to charge our customary hourly fees, subject to a cap of \$6,000.00, plus out-of-pocket disbursements.

Assuming the MWQFA loan is made to the Town on a tax-exempt basis, we propose to charge our customary hourly rates, subject to a cap of \$8,000.00, plus out-of-pocket disbursements.

The quoted fee amounts for an MWQFA loan are subject in all respects to the assumptions detailed in this letter. In addition, our quoted compensation set forth above for a tax-exempt loan assumes that detailed tax analysis or tax documentation in addition to the Tax and Section 148 Certificate will not be required due to participation of other governmental entities in the project or due to use or operation of project improvements by private parties (private parties include the federal government and 501(c)(3) entities). In the event that our assumptions prove not to be correct or such tax issues become apparent prior to the closing, we will negotiate the appropriate level of additional compensation ahead of time.

Please note that we will require payment of our bond counsel fees and out-of-pocket disbursements promptly following closing of the MWQFA loan. Depending on the Town's agreements with MWQFA, you should be able to pay such counsel fees and disbursements from proceeds of the applicable financing. (You may always choose to pay our fees and expenses from other available funds.) Of course, if we are steadily working on the MWQFA loan and the



Town decides not to complete the financing (for whatever reason), we will expect to be compensated for time spent on the matter to date (subject to the applicable stated fee cap) once that decision has been made.

(ii) GENERAL OBLIGATION BORROWING

We have assumed for purposes of this proposal that any general obligation borrowing to be obtained by the Town for its own purposes will involve the private placement of a single tax-exempt bond to a bank rather than a negotiated underwriting of the Town's bonds. For any such general obligation borrowing to be incurred by the Town for its own purposes, we will provide all of the necessary bond counsel services (which are similar to those described above under item (i) for an MWQFA loan, except that no Loan Proceeds Questionnaire and Certificate is required), but we will require that the Town Attorney deliver only a no litigation certificate in connection with the bond closing.

We note that the Town has private sale authority in its Charter. Accordingly, the Town could choose to issue a general obligation bond directly to a bank with whom it negotiates directly or the bond purchaser could be determined through a "competitive negotiation".

The attraction of a "competitive negotiation" is that it allows the issuer to create a level playing field without having to go through the mechanics of a public sale at competitive bid, thereby maximizing the likelihood that the Town will identify a purchaser willing to offer the lowest available rate while insulating Town officials from criticism that they only talked with a bank with which the Town or applicable officials have a relationship.

In a "competitive negotiation", the financial advisor or, if none, bond counsel to the issuer prepares and sends a solicitation to local and regional banks approved by the issuer that describes the terms of the financing (whether interest on the bond will be tax-exempt or taxable, the maturity schedule, principal and interest payment dates, preferred prepayment terms, etc.) and asks interested respondents to submit a response by a certain date and time quoting an interest rate (or method by which the rate will be determined) and any conditions or other terms the respondent will require. The solicitation is typically sent to the list of potential purchasers 10-14 days before the response due date, and the response due date is always set at least a week before the date the issuer's governing body will meet to adopt a resolution identifying the purchaser and fixing the details of the bond issue.

If the Town chooses to negotiate directly with a bank for any general obligation borrowing without bond counsel involvement, you should be aware of the following: (i) no mortgage should be placed upon the financed property, (ii) the Town should not be required to pledge any other kind of security for the financing (e.g., amounts on deposit in accounts, etc.), (iii) the bank should not have the right to accelerate the loan, (iv) the bank should not require that an inspector sign off on progress payments or that the bank hold the bond proceeds, and (v) the Town should not be required to increase the interest rate on the bond if either the bond is

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determined to be taxable or federal or state taxing authorities modify the manner in which the bank's income is taxed. It is because the bond will be a general obligation of the Town that additional security, mortgages, inspections, and loan agreements should not be required—the bank gets no interest in the financed property.

Our practice for any general obligation bond issue is to charge our customary hourly rates, subject to an agreed-upon cap, plus out-of-pocket disbursements. The only types of expenses the firm typically incurs for a general obligation bond issue are FedEx and messenger charges.

Our quoted compensation for an MWQFA loan in the succeeding paragraphs assumes that a single tax-exempt bond will be issued and the following: (i) other than as described on the last page of this letter, we will not need to attend any Council meetings or working group meetings in person (we will provide Town officials and the Town Attorney with a summary of any bond ordinance or resolution to assist them in presenting the same to the Council), (ii) the financed improvements will be owned by the Town, used solely by the Town and operated by Town employees, (iii) the Town has no plans to privatize the financed improvements or to sell or lease the same to a private party or to engage a private operator of the same in the foreseeable future (for these purposes, private parties include the federal government and 501(c)(3) entities), (iv) the Town will close on all funding from a single source at the same time, (v) the original bond ordinance passed contains sufficient bonding authority and will not need to be supplemented at a later date for increased borrowing capacity, (vi) proceeds of the bond will not be applied to pay off any interim financing, (vii) if the Town chooses to undertake a competitive negotiation, a purchaser is chosen through the initial solicitation, and (viii) the bond issue closes by December 31, 2011.

If the Town identifies a bank to purchase the bond without our involvement and the bank's terms do not need to be heavily negotiated in order to ensure compliance with State and federal law, we propose to charge our customary hourly rates, subject to a cap of \$8,500.00, plus out-of-pocket disbursements.

If the Town does not have a financial advisor and wishes us to undertake a competitive negotiation on its behalf, we propose to charge our customary hourly rates, subject to a cap of \$11,500.00, plus out-of-pocket disbursements.

If the Town has a financial advisor and the financial advisor is responsible for preparing (with bond counsel's review and input) and circulating a competitive solicitation and analyzing the responses, we propose to charge our customary hourly rates, subject to a cap of \$9,500.00, plus out-of-pocket disbursements.

Please note that we will require payment of our bond counsel fees and out-of-pocket disbursements promptly following closing of the bond issue. Of course, if we are steadily working on the bond issue and the Town decides not to complete the financing (for whatever



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reason), we will expect to be compensated for time spent on the matter to date (subject to the applicable stated fee cap) once that decision has been made.

(iii) SPECIAL TAXING DISTRICT FINANCING

As we discussed, the firm's practice for a special taxing district or tax increment financing borrowing (or any hybrid TIF/STD borrowing) is to charge our customary hourly rates, plus out-of-pocket disbursements, and to enter into an agreement with the developer(s) by which the developer(s) agree(s) to pay our fees and expenses whether or not the contemplated bonds are ever issued. Once such a financing has gotten to a certain point (pricing for a limited public offering, substantial negotiation of the documents for a private placement with a single bank), we typically are willing to commit to a cap on our fees, absent extraordinary circumstances (e.g., the bonds not selling at pricing).

For any TIF and/or STD financing that the Town undertakes that closes by December 31, 2011, we are willing to hold our customary hourly rates at their 2009 rates through such date. For my services that rate will be \$400.00/hour and for Vic's services the quoted rate will be \$275.00/hour through December 31, 2011.

As noted in parts (i) and (ii) above with regard to an MWQFA loan or general obligation borrowing, our quoted compensation assumes that we will not need to attend any Council or working group meetings. However, we understand that clients often like to meet their bond lawyers in person and, accordingly, we are willing to attend a single Council meeting of the Town's choosing (whether it is merely to discuss the parameters of the contemplated MWQFA loan or general obligation borrowing or to be present when a bond ordinance or resolution is considered for introduction or passage) and to charge the time for such appearance and the required travel against the quoted fee cap for the applicable financing. If the Town wishes us to attend additional Council meetings or any working group meetings for an MWQFA loan or general obligation borrowing, we will negotiate appropriate compensation with the Town.

Please let us know if we may provide you with any additional information regarding our experience and qualifications as bond counsel. We would be delighted to have the opportunity to serve the Town as bond counsel for the contemplated financings.

Very truly yours,



Lindsey A. Rader

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