

**EDA Members:**

Dan Roe,  
President  
Lisa Laliberte,  
Vice President  
Wayne Groff,  
Treasurer  
Robert Willmus  
Jason Etten



**Economic Development  
Authority  
Meeting Agenda  
Monday, January 28, 2019  
6:00pm  
City Council Chambers**

**Address:**  
2660 Civic Center Dr.  
Roseville, MN 55113

**Phone:**  
651-792-7000

**Website:**  
[www.growroseville.com](http://www.growroseville.com)

1. 6:00 P.M. Roll Call  
Voting & Seating Order: Willmus, Laliberte, Groff, Etten and Roe
2. Pledge Of Allegiance
3. Approve Agenda
4. 6:01 P.M. Public Comment
5. Business Items (Action Items)
  - 5.A. Consider Contract For Roseville Economic Development Authority Legal Services

Documents:

[5A REPORT AND ATTACHMENT.PDF](#)

6. 6:15 P.M. Adjourn To City Council Meeting



REQUEST FOR ECONOMIC DEVELOPMENT AUTHORITY ACTION

Date: 1/28/2019

Item No.: 5.a

Department Approval

Executive Director Approval

Item Description: Consider Contract for Roseville Economic Development Authority Legal Services

1 BACKGROUND

2 The Roseville Housing and Redevelopment Authority (RHRA) conducted a Request for  
3 Proposals (RFP) and an interview process for legal services in 2009 which specifically  
4 identified legal services that specialized in Housing and Redevelopment Authority (HRA)  
5 expertise. From that process Kennedy & Graven was identified as a firm with a high level  
6 of HRA legal experience and also offered a reasonable hourly billing rate. In 2012 the  
7 RHRA again solicited RFPs for legal services and based on the information submitted, the  
8 RHRA determined the legal services received from Kennedy & Graven were below market  
9 price for the specialized services provided. In 2015 the RHRA was merged into the  
10 Roseville Economic Development Authority (REDA), which then continued to use the law  
11 firm of Kennedy & Graven, as it is one of the only remaining law firms in the Twin Cities  
12 that has attorneys practicing specifically in the areas of HRA, EDA, public finance and  
13 economic development and redevelopment.

14  
15 Since the combining of the RHRA and REDA, the REDA has taken over the Tax Increment  
16 Financing (TIF) for the City of Roseville and manages all projects seeking financial  
17 assistance. As a result, the city-managed TIF and financing requests for projects require  
18 legal services from an attorney regularly practicing in this area of law. Such legal services  
19 differ from the broad legal services provided by general municipal law practitioners.

20  
21 It has been six years since the last RFP for legal services for the REDA, and Staff felt it  
22 was prudent to solicit requests to ensure the REDA is receiving high quality and specialized  
23 legal services at an affordable price.

24  
25 In October 2018, an RFP prepared by Staff detailed the following needs and expectations  
26 for legal services for the REDA:

- 27  
28 1. Attend any Roseville EDA meeting and other City Board, Commission or  
29 Council meetings as requested by the EDA Executive Director, Community

30 Development Director or Housing and Economic Development Program  
31 Manager.

- 32
- 33 2. Draft any notes, mortgage, security agreements, promissory notes and any  
34 other loan documents as requested.
- 35
- 36 3. Advise Executive Director, Community Development Director, Housing and  
37 Economic Development Program Manager, Board members and other staff on  
38 HRA and EDA legal matters.
- 39
- 40 4. Represent EDA for Housing Bonds related to financing Housing  
41 Developments.
- 42
- 43 5. Upon request, provide written update on new State or Federal legislation or  
44 judicial decisions impacting the EDA and suggested action or changes in  
45 operations or procedures to assure compliance.
- 46
- 47 6. Provide advice on open meeting law, data practice, records retention and  
48 privacy issues.
- 49
- 50 7. Assist in the negotiation and preparation of contracts for private development,  
51 assessment agreements, special assessment agreements, interest rate reduction  
52 programs, revenue notes, and other contractual arrangements between the  
53 REDA and a developer or business.
- 54
- 55 8. Assist with the development of housing and economic development programs  
56 and tax increment financing districts (TIF), and prepare the appropriate  
57 documents and resolutions.
- 58
- 59 9. Assist in the due diligence, acquisition, and disposition of any REDA-owned  
60 property.
- 61

62 Based upon these responsibilities the REDA received RFPs from the following firms:

- 63
- 64 • Briggs & Morgan (BM)
- 65 • Eckberg Lammers (EL)
- 66 • Erickson, Bell, Beckman & Quinn, P.A.(EBBQ)
- 67 • Kennedy & Graven (KG)
- 68

69 ***Experience***

70 KG is the only firm that has extensive experience of representation of HRAs and EDAs.  
71 EL has some representation experience of HRAs and EDAs but mainly serves as municipal  
72 counsel. BM primarily assists with financing to EDAs, and HRAs through the use of Bonds  
73 and TIF. EBBQ has no experience providing any counsel services directly to HRAs and  
74 EDAs.

76 ***Fees***

77 KG, BM, and EBBQ all proposed an hourly billing rate of \$200 an hour for the lead  
78 attorney representing the REDA. KG hourly fee for paralegal services is \$135 and BM is  
79 \$150. EL proposed fees would be \$175 for attorney and \$100 for paralegal services per  
80 hour. In addition they will charge a flat fee per REDA meetings of \$250. EBBQ did not  
81 quote a paralegal fee. KG was the only firm to guarantee its rate for 3 years.

82  
83 It should be noted that the REDA staff primarily works with paralegal staff at KG once all  
84 of the documents are drafted by the attorney to close on property the REDA has acquired.  
85 In addition the paralegal will assemble all closing documents into a packet for such  
86 transactions.

87  
88 Each year the REDA budgets \$15,000 per year for attorney services. The following costs  
89 have been expended as of December 6, 2018 from budgeted funds out of the HRA or EDA  
90 levy since 2016:

91

2016	2017	2018
\$6,756.00	\$5,482.00	\$10,043.00

92  
93 Kennedy & Graven have also provided project related legal services (i.e. services outside  
94 of the above-mentioned budgeted services), however those legal costs are paid for by the  
95 developer of the project. The City has never used its current general counsel of EBBQ (or  
96 other past firms which have served as City Attorney for the City) for any bond financing  
97 or TIF legal work.

98  
99 Staff recommends the EDA continue to work with Kennedy & Graven for its legal  
100 services. In addition to the subject matter expertise provided by the firm and the reasonable  
101 billing rates, it would not be in the best interest of the REDA to switch law firms at this  
102 time due to the status of the following projects:

- 103
- 104 • 196 South McCarrons Boulevard;
  - 105 • Modification of TIF #17a HSS to allow for use of collected funds;
  - 106 • Colder Products Company Subsidy Request and Development  
107 Agreement;
  - 108 • McGough documents to the Development Agreement and financing  
109 of the project;
  - 110 • Edison Multifamily Housing Development Agreement and pass  
111 through of Grant Funds awarded;
  - 112 • Development of a business loan program using HRA funds.
- 113

114 Switching to a new law firm would require another attorney and his or her staff to spend  
115 time reviewing files, meeting with staff and conducting research to be able to competently  
116 represent and advise the REDA on the above-listed matters. Further, it also would not  
117 serve in the best interest of the REDA to use a law firm that does not have any specific (or  
118 only minimal) knowledge and experience representing and advising a HRA or EDA.  
119 Transitioning to another law firm at this time could end up costing the REDA more in legal

120 fees since research time and review would be needed for the new attorney and staff to get  
121 up to speed on these on-going projects. Staff sometimes needs EDA or HRA procedure  
122 guidance and relies on having an attorney that is familiar with current issues and Minnesota  
123 Statutes so a response can be provided quickly and efficiently.

124

125 **BUDGET IMPLICATIONS**

126 The REDA budgets \$15,000 a year for professional legal services.

127

128 **STAFF RECOMMENDATION**

129 Based upon review of the RFPs with regards to specific experience, quoted billing fees and  
130 the status of several current projects, Staff recommends signing a three year contract for  
131 professional legal services for EDA and HRA guidance with Kennedy & Graven.

132

133 **REQUESTED REDA BOARD ACTION**

134 Approve a three year contract for professional legal services for EDA and HRA guidance  
135 with Kennedy & Graven.

Prepared by: Jeanne Kelsey, Housing and Economic Development Program Manager, 651-792-7086

Attachment A: Contract for legal services with Kennedy and Graven.

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3  
4 **Standard Agreement for Professional Services**  
5  
6

7 This Agreement (“Agreement”) is made on the 28<sup>th</sup> day of January, 2019, between the  
8 Roseville Economic Development Authority, a public body corporate and politic and political  
9 subdivision of the state of Minnesota (hereinafter “REDA”), and Kennedy & Graven, Chartered,  
10 a professional association organized and existing under the laws of the State of Minnesota  
11 (hereinafter “Consultant”).  
12

13 **Preliminary Statement**  
14

15 REDA desires to hire the Consultant to render certain legal, technical, and/or professional  
16 assistance in connection with REDA’s undertakings. The purpose of this Agreement is to set  
17 forth the terms and conditions for the performance of professional services by the Consultant.  
18

19 REDA and Consultant agree as follows:  
20

- 21 1. **Scope of Work Proposal.** The Consultant agrees to provide the professional services  
22 shown in Exhibit “A” attached hereto (“Work”) in consideration for the compensation set  
23 forth in Provision 3 below. The terms of this Agreement shall take precedence over and  
24 supersede any provisions and/or conditions in any proposal submitted by the Consultant.  
25
- 26 2. **Term.** The term of this Agreement shall be effective upon the approval of the REDA  
27 Board of Commissioners and execution by the President and Executive Director, the date  
28 of signature by the parties notwithstanding, and continue through the earlier of December  
29 31, 2021, or the date of termination by either party upon 30-day written notice thereof as  
30 provided in paragraph 7 hereof.  
31
- 32 3. **Compensation for Services.** REDA agrees to pay the Consultant the compensation  
33 described in Exhibit B attached hereto for the Work. Fees shall be paid within 30 days  
34 following receipt of a monthly invoice for services performed on an as-needed basis.  
35 Consultant will also charge for reasonable out-of-pocket expenses such as reproductions,  
36 delivery services, long-distance telephone charges, and similar, subject to the following:  
37
- 38 A. Any changes in the Work which may result in an increase to the compensation due  
39 the Consultant shall require prior written approval of REDA. REDA will not pay  
40 additional compensation for Work that does not have such prior written approval.  
41
- 42 B. Third party independent contractors and/or subcontractors may be retained by the  
43 Consultant when required by the complex or specialized nature of the Work, but only  
44 when authorized in writing by REDA. The Consultant shall be responsible for and  
45 shall pay all costs and expenses payable to such third party contractors unless  
46 otherwise agreed to by the parties in writing.

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4. **Method of Payment.** The Consultant shall submit to REDA, on a monthly basis, an itemized invoice for Work performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to REDA. Invoices shall contain the following:
    - A. For Work reimbursed on an hourly basis, the Consultant shall indicate for each employee, his or her name, job title, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, and the total amount due for each project task. The Consultant shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in Exhibit A, the Consultant shall provide an itemized listing and such documentation of such expenses as is reasonably required by REDA. Each invoice shall contain REDA's project number and a progress summary showing the original (or amended) amount of the Agreement, current billing, past payments and unexpended balance due under the Agreement.
    - B. To receive any payment pursuant to this Agreement, the invoice must include the following statement dated and signed by the Consultant: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."
  5. **Standard of Care.** All Work performed by the Consultant under this Agreement shall be in accordance with the normal standard of care in Ramsey County, Minnesota, for professional services of like kind.
  6. **Audit Disclosure.** Any reports, information, data and other written documents given to, or prepared or assembled by the Consultant under this Agreement which REDA requests to be kept confidential shall not be made available by the Consultant to any individual or organization without REDA's prior written approval. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by REDA and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Agreement. The Consultant shall at all times abide by Minn. Stat. § 13.01 et seq. and the Minnesota Government Data Practices Act, to the extent the Act is applicable to data, documents, and other information in the possession of the Consultant.
  7. **Termination.** This Agreement may be terminated at any time by either party, with or without cause, by delivering to the other party at the address of such party set forth in paragraph 22, a written notice at least thirty (30) days prior to the date of such termination. The date of termination shall be stated in the notice. Upon termination the Consultant shall be paid for services rendered (and reimbursable expenses incurred if required to be paid by REDA under this Agreement) by the Consultant through and until the date of termination so long as the Consultant is not in default under this Agreement. If however, REDA terminates the Agreement because the Consultant is in default of its obligations under this Agreement, no further payment shall be payable or due to the

93 Consultant following the delivery of the termination notice, and REDA may, in addition  
94 to any other rights or remedies it may have, retain another consultant to undertake or  
95 complete the Work to be performed hereunder.

96  
97 8. **Independent Consultant.** At all times and for all purposes herein, the Consultant is an  
98 independent contractor and not an employee of REDA. No statement herein shall be  
99 construed so as to find the Consultant an employee of REDA.

100  
101 9. **Assignment.** The Consultant shall not assign this Agreement, nor its rights and/or  
102 obligations hereunder, without the prior written consent of REDA.

103  
104 10. **Services Not Provided For.** No claim for services furnished by the Consultant not  
105 specifically provided for herein shall be paid by REDA.

106  
107 11. **Compliance with Laws and Regulations.** The Consultant shall abide with all federal,  
108 state and local laws, statutes, ordinances, rules and regulations in the performance of the  
109 Work. The Consultant and City, together with their respective agents and employees,  
110 agree to abide by the provisions of the Minnesota Data Practices Act, Minnesota Statutes  
111 Section 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13. Any  
112 violation by the Consultant of statutes, ordinances, rules and regulations pertaining to the  
113 Work to be performed shall constitute a material breach of this Agreement and entitle  
114 REDA to immediately terminate this Agreement.

115  
116 12. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement shall  
117 not affect, in any respect, the validity of the remainder of this Agreement.

118  
119 13. **Indemnification.** The parties shall indemnify and hold harmless each other and their  
120 officials, agents, and employees from any loss, claim, liability, and expense (including  
121 reasonable attorney's fees and expenses of litigation) arising out of any action  
122 constituting malfeasance or gross negligence of the respective parties in the performance  
123 of the service of this Agreement.

124  
125 14. **Insurance.**

126  
127 a. During the term of this Agreement, the Consultant shall maintain, at a minimum,  
128 comprehensive general liability and professional liability insurance.  
129 Comprehensive general liability insurance shall have an aggregate limit of Two  
130 Million Dollars (\$2,000,000.00).

131  
132 b. Upon request by REDA, the Consultant shall provide a certificate or certificates  
133 of insurance relating to the insurance required. Such insurance secured by the  
134 Contractor shall be issued by insurance companies licensed in Minnesota. The  
135 insurance specified may be in a policy or policies of insurance, primary or excess.

136  
137 c. Such insurance shall be in force on the date of execution of this Agreement and  
138 shall remain continuously in force for the duration of the Agreement.

- 139  
140 15. **Ownership of Documents.** All plans, diagrams, analysis, reports and information  
141 generated in connection with the performance of this Agreement (“Information”) shall  
142 become the property of REDA, but the Consultant may retain copies of such documents  
143 as records of the services provided. REDA may use the Information for any reasons it  
144 deems appropriate without being liable to the Consultant for such use. The Consultant  
145 shall not use or disclose the Information for purposes other than performing the Work  
146 contemplated by this Agreement without the prior consent of REDA.  
147
- 148 16. **Dispute Resolution/Mediation.** Each dispute, claim or controversy arising from or  
149 related to this Agreement or the relationships which result from this Agreement shall be  
150 subject to mediation as a condition precedent to initiating arbitration or legal or equitable  
151 actions by either party. Unless the parties agree otherwise, the mediation shall be in  
152 accordance with the Commercial Mediation Procedures of the American Arbitration  
153 Association then currently in effect. A request for mediation shall be filed in writing with  
154 the American Arbitration Association and the other party. No arbitration or legal or  
155 equitable action may be instituted for a period of 90 days from the filing of the request  
156 for mediation unless a longer period of time is provided by agreement of the parties.  
157 Cost of mediation shall be shared equally between the parties. Mediation shall be held in  
158 the City of Roseville unless another location is mutually agreed upon by the parties. The  
159 parties shall memorialize any agreement resulting from the mediation in a Mediated  
160 Settlement Agreement, which Agreement shall be enforceable as a settlement in any  
161 court having jurisdiction thereof.  
162
- 163 17. **Annual Review.** Prior to each anniversary of the date of this Agreement, REDA shall  
164 have the right to conduct a review of the performance of the Work performed by the  
165 Consultant under this Agreement. The Consultant agrees to cooperate in such review and  
166 to provide such information as REDA may reasonably request. Following each  
167 performance review the parties shall, if requested by REDA, meet and discuss the  
168 performance of the Consultant relative to the remaining Work to be performed by the  
169 Consultant under this Agreement.  
170
- 171 18. **Conflicts.** (a) No salaried officer or employee of REDA and no member of the Board of  
172 REDA shall have a financial interest, direct or indirect, in this Agreement. (b) The  
173 Consultant agrees to immediately inform, by written notice, the REDA Executive  
174 Director of possible contractual conflicts of interest in representing REDA, as well as  
175 property owners or developers, on the same project. Conflicts of interest may be grounds  
176 for termination of this Agreement.  
177
- 178 19. **Governing Law.** This Agreement shall be controlled by the laws of the State of  
179 Minnesota.  
180
- 181 20. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which  
182 shall be considered an original.  
183

184 21. **Severability.** The provisions of this Agreement are severable. If any portion hereof is,  
185 for any reason, held by a court of competent jurisdiction to be contrary to law, such  
186 decision shall not affect the remaining provisions of this Agreement.

187  
188 22. **Notices.** All notices to be given hereunder shall be in writing and shall be deemed given  
189 on the earlier of receipt or three (3) business days after deposit in the United States mail,  
190 postage prepaid, addressed to:

191  
192 Roseville Economic Development Authority  
193 Attn: Executive Director  
194 2660 Civic Center Drive  
195 Roseville, MN 55113

196  
197 Kennedy & Graven, Chartered  
198 Attn: Martha Ingram  
199 470 U.S. Bank Plaza  
200 200 south Sixth Street  
201 Minneapolis, MN 55402

202  
203 23. **Entire Agreement.** Unless stated otherwise in this Provision 23, the entire agreement of  
204 the parties is contained in this Agreement. All attachments referenced in this Agreement  
205 are attached to and incorporated into this Agreement, and are part hereof as though they  
206 were fully set forth in the body of this Agreement. This Agreement supersedes all prior  
207 oral agreements and negotiations between the parties relating to the subject matter hereof  
208 as well as any previous agreements presently in effect between the parties relating to the  
209 subject matter hereof. Any alterations, amendments, deletions, or waivers of the  
210 provisions of this Agreement shall be valid only when expressed in writing and duly  
211 signed by the parties, unless otherwise provided herein. The following agreements  
212 supplement and are a part of this Agreement: None.  
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214 IN WITNESS WHEREOF, the undersigned parties have entered into this Agreement as  
215 of the date set forth above.

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ROSEVILLE ECONOMIC  
DEVELOPMENT AUTHORITY

\_\_\_\_\_  
President

\_\_\_\_\_  
Executive Director

KENNEDY & GRAVEN, CHARTERED

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT A**

Consultant's Services

- A. For specific projects or programs, assist with analysis of finance options.
- B. Assist in the negotiation and preparation of contracts for private development, assessment agreements, special assessment agreements, interest rate reduction programs, revenue notes, and other contractual arrangements between the REDA and a developer or business.
- C. Assist with the development of housing and economic development programs and tax increment financing districts, and prepare the appropriate documents and resolutions.
- D. Assist in putting loan documents together for loan programs and/or any project specific loan that utilizes REDA funds.
- E. Assist in the due diligence, acquisition, and disposition of any REDA-owned property.

**ATTACHMENT B**

## Consultant's 2019 Hourly Rates

**Development & EDA Counsel**

The standard billing rate for each attorney, paralegal and law clerk for development and redevelopment services that are *not* reimbursed by a private developer, as well as general EDA services, is listed below:

Martha Ingram	200
Gina Fiorini	185
Sarah Sonsalla	200
Brian Lehinger	180
Jenny Boulton	195
Ron Batty	230
Julie Eddington	195
Sofia Lykke	185
Bob Alsop	215
Doug Shaftel	190
All Paralegals	135
All Law Clerks	125

The standard rate for all attorneys where the fees are reimbursed by developers at no long term cost to the Authority is \$300/hour (referred to as the “pass-through rate”). The pass-through rate for paralegals and law clerks is the same as above.

We propose that the above standard rates and pass-through rates apply for all three years of the contract. We understand that these quoted fees must be the hourly rates that are not subject to adjustment during the effective period of the term of the contract with the Authority.

***Bond Counsel***

Our proposed fee for services as bond counsel would be determined under the criteria applicable to bond counsel as set forth in Minnesota Statutes, Section 481.21 as follows:

- (i) the time and labor required;
- (ii) the experience and knowledge of the attorney;
- (iii) the complexity and novelty of problems involved;
- (iv) the extent of the responsibilities and the results obtained; and
- (v) the sufficiency of assets available to pay for the services.

The fee must not be based primarily on a percentage of the amount of bonds or obligations sold.” Thus, our fees are subject to determination in light of the criteria of Section 481.21 as the actual bond structures are determined. However, we generally determine our hourly rates based on the criteria of Section 481.21.

We propose to perform bond counsel services for the Authority at an hourly rate of \$310 for attorneys and \$135 for paralegals. We would bill the Authority for services after delivery of the bonds to the purchasers. If the bonds were not successfully delivered for any reason, we would bill only expenses. On revenue bonds (which would be the most typical bonds issued by the Authority), we normally negotiate a total fee amount with the issuer (and borrower, in the case of conduit bonds). We also bill the issuer for actual and necessary expenses which, on routine issues, seldom exceed \$200.

***Billing Increment***

The minimum increment of time billed is one-tenth of an hour for all service. There is no minimum increment for any type of service.

***Other Costs***

The firm will bill its out-of-pocket costs for the following items:

- Westlaw legal research: Typically not charged, unless unique research needed. If charged, typically \$3.00/minute.
- Photocopying: Typically not charged, except for large production runs may be charged at \$.05 per page
- Mileage: IRS-approved reimbursement rate
- Other out of pocket expenses such as filing fees, recording fees, messenger services and postage: Actual cost