



WEST VIRGINIA PARKWAYS AUTHORITY

REQUEST FOR PROPOSALS

FOR

BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES

Related to the proposed issuance of:

West Virginia Parkways Authority
Parkway Revenue Bonds,
Series 2021 A (the “2021 Parkway Revenue Bonds”)

RFP Issuance Date: December 30, 2020

Proposal Due Date: January 15, 2021

West Virginia Parkways Authority
3310 Piedmont Road
Charleston, WV 25306

The West Virginia Parkways Authority (“Parkways” or the “Authority”), in coordination with the Office of the Governor of the State of West Virginia and the West Virginia Division of Highways (“DOH” and collectively with Parkways, the “State”) seeks to retain qualified bond counsel and disclosure firm(s) in connection with the issuance by the Authority of its 2021 Parkway Revenue Bonds (the “2021 Parkway Revenue Bonds”) in one or more series of bonds. The 2021 Parkway Revenue Bonds represent the second phase of the Parkways funding included in the Governor’s Roads to Prosperity Highway Program (the “Program”). The Program included various funding mechanisms to support transportation infrastructure projects throughout the State. Collectively, the Parkways funding coupled with General Obligation Bonds and GARVEE Bonds (each issued separately) have funded or are expected to fund over \$2.6 Billion in projects. The Authority issued \$166.4 million of Senior Lien Turnpike Toll Revenue Bonds, Series 2018 (the “2018 Parkway Revenue Bonds”) which funded \$172 million in transportation infrastructure projects (as described further herein). The 2018 Parkway Revenue Bonds are the only outstanding bonds of the Authority. The Authority is expected to fund approximately \$328 million more in transportation projects to be issued in one more or series over the next 1-3 years. **Please note, this solicitation is in connection with the issuance of the 2021 Parkway Revenue Bonds. However, the Authority reserves the right to use the bond counsel and disclosure counsel firm(s) selected through this solicitation for future issuances at its sole discretion. The Authority has the option to retain one law firm to serve as both bond counsel and disclosure counsel or retain separate law firms to serve as bond counsel and disclosure counsel, respectively.**

The 2021 Parkway Revenue Bonds will be issued pursuant to Chapter 17, Article 16A of the Code of West Virginia (the “Act”) and the Authority’s Master Trust Indenture dated as of August 1, 2018 as supplemented by the First Supplemental Trust Indenture also dated as of August 1, 2018. The Act, as amended and reenacted, expanded the powers of the Authority including, but not limited to: (1) authorizing the Parkways to issue bonds for turnpike and for certain DOH projects, (2) authorizing the Authority to continue collecting tolls, and increase tolls on the Turnpike with certain restrictions including revised notice and approval provisions, and (3) authorizing the creation of a passenger motor vehicle unlimited use single fee E-ZPass transponder discount program (hereinafter referred to as the “Single Fee Program” and as discussed further below and described in the Act).

In 2018, the Authority developed its Master Trust Indenture, debt policy and official statement in order to create a highly rated program that will enable the Parkways and DOH to maximize proceeds for funding the costs of acquisition, construction, reconstruction, maintenance, improvement or repair of public highways and bridges, as contained in the Division of Highways’ Statewide Transportation Improvement Plan as it existed on June 1, 2017, or the West Virginia Division of Highways SOS Transportation Investment Program Candidate Project List dated May 3, 2017, in the following counties: (1) Raleigh County; (2) Fayette County; (3) Wyoming County; (4) Mercer County; (5) Kanawha County; (6) Greenbrier County; (7) Monroe County; (8) Summers County; (9) McDowell County; and (10) Nicholas County.

Scope of Services:

Bond counsel will be expected to perform the following services:

- Prepare all authorizing resolutions, legal documents, legal notices and certificates required for the issuance of the 2021 Parkway Revenue Bonds;
- Assist representatives of the Authority and its financial advisor in determining the material to be included in the preliminary official statement (“POS”) and official statement (the “OS”) describing the authorization for the bonds, the security for the bonds, tax matters, summary of Trust Indenture and other legal matters traditionally passed on by bond counsel and reviewing and commenting on the drafts of the POS and OS;
- Cause the 2021 Parkway Revenue Bonds to be prepared in definitive form for delivery to the initial purchaser thereof;
- Undertake all requisite tax analyses, prepare tax certificate and other pertinent tax documents;
- Issue an approving opinion of bond counsel, including approval of the legality of the sale and issuance of bonds pursuant to applicable law, and to the extent that interest on the bonds is intended to be exempt from federal income taxation, an opinion that interest on the 2021 Parkway Revenue Bonds is exempt from federal and state income taxation; and
- Deliver such other legal opinions as are customarily required from bond counsel.

Disclosure counsel will be expected to perform the following services:

- Take primary responsibility for the drafting of disclosure in the preliminary and final official statements for Authority issued bonds, prepare the Authority’s continuing disclosure document for bond transaction and work with underwriters’ counsel to undertake due diligence, participate in conference calls and meetings;
- Ensure the Authority’s compliance with all federal securities laws and regulations and Municipal Securities Rulemaking Board rules for the Authority’s 2021 Parkway Revenue Bonds;

- Provide a “10b-5 Opinion” with respect to the preliminary and final official statements of Authority issued bonds;
- Review all relevant documents and procedures currently in place by the Authority to comply with U.S. Securities and Exchange Commission Rule 15(c)2-12;
- Review all continuing disclosure documents prepared by the Authority and confirm the documents fulfill the Authority’s continuing disclosure requirements and are filed in a timely manner with Electronic Municipal Market Access (“EMMA”); and
- Additional disclosure-related legal issues as needed.

Submitting Proposals:

All submissions must be received by January 15, 2021, no later than 12:00 p.m. (E.T.) via email. Emails with the proposals should be titled "Proposal for Bond Counsel and Disclosure Services" and sent to the email address provided below. Please provide **two** separate files in your submission with one clearly labeled “QUALIFICATION SUBMISSION” and the second file labeled “FEE PROPOSAL”. Both files should be submitted electronically and can be submitted in a single email. Please note that the Authority’s acknowledgement of receipt of proposals, by the aforementioned deadline, will serve as the official record of receipt.

Margaret Vickers, Director of Purchasing West Virginia Parkways Authority 3310 Piedmont Road Charleston, WV 25306 (304) 926-1900 x2314 mvickers@wvturnpike.com

All documents and information submitted in response to this solicitation shall, pursuant to the West Virginia Freedom of Information Act, become public record.

Communications with any representatives of the Authority concerning this request by you, or on your behalf, are not appropriate and will not be permitted during the submission and selection processes. Any such communication or solicitation shall be grounds for immediate disqualification of the firm at the sole discretion of the Authority. All questions and communications should be directed exclusively to Margaret Vickers at mvickers@wvturnpike.com. Questions must be submitted through email by January 8, 2021, no later than 12:00 p.m. (E.T.). Responses to questions will be posted to our website under the Purchasing tab at www.wvturnpike.com. It is the Vendor’s responsibility to check the website for any addendum issued. Any addendum issued should be signed and submitted with your RFP.

The Authority will not be responsible for any expenses incurred in the preparation or presentation of the proposal or interviews, or for the disclosure of any information or material received in connection with this solicitation, whether by negligence or otherwise.

Selection Process and Criteria:

The Authority reserves the right to reject any and all proposals, with or without cause, and waive any irregularities or informalities in the proposal. The Authority further reserves the right to make such investigations it deems necessary as to the qualifications of any and all proposals. Deliberate falsification of any qualifications set forth in the proposals shall result in immediate disqualification of the firm, at the sole discretion of the Parkways. In the event all proposals are rejected, the Authority reserves the right to re-solicit proposals, at its sole discretion. A tentative timetable for the selection of bond counsel and disclosure counsel firm(s) is provided below.

<i>December 30, 2020:</i>	Release of RFP
<i>January 8, 2021:</i>	Questions due
<i>January 12, 2021 at 4:00 pm (E.T.):</i>	Response to Questions
<i>January 15, 2021 at 12:00 pm (E.T.):</i>	Receipt of Proposals
<i>January 21, 2021:</i>	Expected Board approval of Bond Counsel and Disclosure Counsel Firm(s) Selection

The Authority also reserves the right not to issue the 2021 Parkway Revenue Bonds following the selection of bond counsel and disclosure counsel firm(s) for any reason. **Please note, this solicitation is in connection with the issuance of the 2021 Parkway Revenue Bonds. However, the Authority reserves the right to use the bond counsel and/or disclosure counsel firm(s) selected through this solicitation for future issuances at its sole discretion.**

Selection criteria will include expertise, experience and personnel with a particular emphasis on experience with the Parkways Authority and West Virginia Bonds. Fee proposals will only be considered after firms have been evaluated based on their qualifications and criteria noted above. Following rankings of the firms, the Authority may initiate negotiations as to appropriate services and fees with the top-ranked firm. If unsuccessful, the Authority may initiate negotiations with the next-ranked firm. The process will continue until a firm is selected.

Preliminary Financing Timeline:

The preliminary financing timeline for the 2021 Parkway Revenue Bonds anticipates initiating the transaction in the first quarter of calendar year 2021.

Proposals Requirements:

I. Eligible Proposers

Proposals will be accepted only from entities which:

1. Are free from all objections and interests, which might conflict with the interests of the State.
2. Are experienced in municipal public finance transactions similar to the type contemplated, and have an established reputation for excellence in public finance.
3. Are able to provide assurance that the firm and all individual assigned to work on this transaction comply with the guidelines and standards established by the West Virginia Ethics Commission in 158 CSR.

JOINT PROPOSALS WILL NOT BE ACCEPTED

II. Required Components of Bond Counsel and/or Disclosure Counsel Proposal

A. Letter of Transmittal (1-page limit)

A cover letter should accompany your proposal specifying the position requested by your firm, i.e., bond counsel and/or disclosure counsel, certification that your firm is eligible and setting forth the primary contact's name, address, telephone number and e-mail address.

B. Disclosure/Conflict of Interest - Mandatory (No page limit)

1. Affirm that your firm and all individuals that will be assigned to this transaction are free from all obligations and interests, which might conflict with the interests of the State and have not, in any way, violated the provisions of Legislative Rule 158 CSR 4.

2. Identify all pending litigation or regulatory action, either state or federal, if any, related to public finance in which your firm, any predecessor firm or employee is involved. For each matter, provide:
 - a. Nature of the case;
 - b. Summary of the nature of the case or claim;
 - c. Status of the case or claim (e.g. circuit court, on appeal to district court, awaiting certiorari, etc.);
 - d. Approximate dollar amount involved, if any; and
 - e. Improper conduct alleged, if any.
3. Identify any other existing or potential conflicts of interest, as well as your representation of parties or other relationships that might be considered a conflict of interest, that may affect or involve this transaction or the State of West Virginia.

C. Experience and Expertise (3-page limit, excluding tabular summaries)

1. Please describe your firm's public finance practice and related areas of law by providing a brief history of the firm in these areas.
2. Provide a description of your firm's experience serving as bond counsel and/or disclosure counsel during the past five (5) years for issuers within the State of West Virginia, for transactions exceeding \$25 million, which you believe qualifies your firm to serve as bond counsel and/or disclosure counsel for the Authority. List no more than ten (10) issues. For each issue, please indicate the following:
 - a. The governmental entity on whose behalf the bonds were issued;
 - b. Par amount and date of issuance;
 - c. Type of transaction;
 - d. Use of proceeds (refinancing or new money);
 - e. The nature of the security pledge;
 - f. Role of law firm (bond counsel and/or disclosure counsel); and
 - g. Opinion(s) your firm provided.

D. Personnel (2-page limit, excluding resumes)

1. Specify the attorney(s) and other persons of your firm who will be assigned to this transaction, the role of each person, and his or her qualifications and experience in municipal public finance transactions. Please identify the following: (i) the primary lawyer for your firm, (ii) the backup team member in the event the primary contact is not available, (iii) the tax attorney

responsible for addressing any tax matters related to the issuance and (iv) other bond attorneys that are resources for this assignment. Indicate the appropriate transactions in "B" above where the identified attorneys played a significant role and describe that role.

2. If proposing for both bond counsel and disclosure counsel, please identify any alterations among personnel between the two roles.

E. Rationale for Appointment (2-page limit)

1. Please briefly describe why your firm should be appointed as the Authority's bond counsel and/or disclosure counsel for the 2021 Parkway Revenue Bonds.

F. References (1-page limit)

1. Please provide three (3) references of similar issuers to the Authority in which you served as bond counsel and/or disclosure counsel for recent comparable transactions.

G. Fees and Expenses (No page limit) – SEPARATE SUBMISSION; See "Submitting Proposals" Section Above

1. Please provide your proposed schedule of hourly rates for providing bond counsel or disclosure counsel services as described in the scope of services herein. If your firm is proposing to serve as either bond counsel or disclosure counsel, please note if there are separate fee schedules for each service.

Computerized legal research tools, such as WESTLAW or LEXIS, may not be billed as an expense. Please state your per-unit costs (if any) for expenses such as copying; whether you will bill for travel expenses and at what rate; and whether and how you bill for any additional attorney-time while traveling.

H. Instructions to Firms Submitting Bids:

Prior to contract award, the apparent successful Firm must be properly registered with the West Virginia Purchasing Division, Vendor Registration www.wvoasis.gov, WV Secretary of State, WV Tax Department, as applicable, and any other entities as necessary. Each of these entities has different fees that may be applicable to their respective registration requirements.

The Purchasing Affidavit and Agreement Addendum should be signed and submitted with the Firms proposal.

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20__.

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

Purchasing Affidavit (Revised 01/19/2018)

2ND ADDENDUM TO MASTER SERVICE SUBSCRIPTION AGREEMENT
STATE AGENCY: WEST VIRGINIA PARKWAYS AUTHORITY
VENDOR:
COMMODITY:

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** – Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety
3. **GOVERNING LAW** – The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State’s governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** –Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.
6. **INTEREST** – Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** – Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** – Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** – Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, or individual, or any other party are deleted.
10. **SIMILAR SERVICES** – Any provisions limiting the Agency’s right to obtain similar services or equipment in the event of default of non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** – The Agency recognizes an obligation to pay attorney’s fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** – Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** – The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor’s liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** – Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** – Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** – Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** – Any provision requiring the Agency to purchase insurance for Vendor’s property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** – Any provision for repossession or equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** – Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

WEST VIRGINIA PARKWAYS AUTHORITY,
an agency of the State of West Virginia

VENDOR

Company Name: _____
Signed: _____
Title: _____
Date: _____

Signed: _____
Title: _____
Date: _____

Revised 11/22/19