



1111 Third Avenue  
Suite 3000  
Seattle, WA 98101

Main: 206.447.4400  
Fax: 206.447.9700  
foster.com

Direct Phone: 206.447.6264  
[lee.marchisio@foster.com](mailto:lee.marchisio@foster.com)

October 5, 2020

Board of County Commissioners  
Franklin County  
1016 N. 4th Ave  
Pasco, WA 99301

**Re: Bond Counsel Engagement Letter for the Issuance of Limited Tax General  
Obligation Refunding Bonds, 2020**

Honorable Commissioners:

We greatly appreciate the opportunity to again serve as bond counsel to Franklin County, Washington (the “County”). As set forth in previous engagement letters, the ethics rules governing lawyers require that we provide the County with a written agreement pertaining to our proposed bond counsel service to the County in connection with the issuance of the above-referenced bonds (the “Bonds”) because our fee is contingent upon the issuance of the Bonds. Further, RCW 36.27.040 requires that the Prosecuting Attorney appoint us as special deputy prosecuting attorneys for the limited purpose of providing the legal services described below. Foster Garvey P.C. (“Foster Garvey”) (formerly, Foster Pepper PLLC), was last appointed in 2014, but it is appropriate to renew our appointment at this time.

We understand that the County desires to issue the Bonds in the principal amount of approximately \$16,500,000 to advance refund on a taxable basis all or a portion of the County’s callable outstanding Limited Tax General Obligation Bonds, 2012. We further understand that the Bonds will be purchased by D.A. Davidson & Co. The purpose of this engagement letter is to set forth certain matters concerning the services Foster Garvey will perform as bond counsel to the County in connection with the issuance of the Bonds.

**SCOPE OF ENGAGEMENT & FEES**

The services that we will provide the County as bond counsel are described in Part A of the attached “Scope of Services.” Based upon: (1) our current understanding of the terms, structure, size and schedule of the financing represented by the Bonds; (2) the duties we will undertake pursuant to this engagement letter; (3) the time we anticipate devoting to the financing; and (4) the responsibilities we will assume in connection therewith, we propose to charge according to the following fee schedule.

<u>Issue Size</u>	<u>Fee</u>
Under \$1MM	Negotiable
\$1MM – \$4.999MM	\$11,200 + \$2.50 per \$1,000 in excess of \$1,000,000
\$5MM – \$9.999MM	\$21,200 + \$1.85 per \$1,000 in excess of \$5,000,000
\$10MM – 24.999MM	\$30,450 + \$1.50 per \$1,000 in excess of \$10,000,000

For refunding bond issues, we apply an adjustment factor of 1.25 from the fee resulting from the above schedule. If the County issues two or more series of Bonds at separate times, a fee would apply to each series. For example, if the County issues one series of taxable limited tax general obligation refunding Bonds in the aggregate principal amount of \$16,500,000, our fee would be \$50,250. We would also request an additional \$10,000 if we are asked to prepare the official statement for the Bonds. Our fees described in the schedule above may increase if: (1) material changes in the structure, size or schedule of the financing occur; or (2) unusual or unforeseen circumstances arise that require a significant increase in our time or responsibility. If, at any time, we believe that circumstances require an adjustment of our original fee schedule, we will advise you. ***Payment of our fee is contingent on a successful closing of each series of the Bonds.*** If for any reason the financing represented by any series of the Bonds is completed without the delivery of our Bond Opinion as bond counsel, or our services are otherwise terminated, we will expect to be compensated at our normal hourly rates for time actually spent on your behalf; provided that, (1) we submit a billing statement to the County that describes the time, legal services and expenses incurred on your behalf, and (2) such compensation shall not exceed the amount of the fee that would have been paid had the Bonds closed with our Bond Opinion.

### ATTORNEY-CLIENT RELATIONSHIP

Upon execution of this engagement letter, the County will be our client and an attorney-client relationship will exist between us. In this transaction we represent only the County, we are not counsel to any other party, and we are not acting as an intermediary among the parties. Our services as bond counsel regarding the Bonds are limited to those contracted for in this letter. The County's execution of this engagement letter will constitute an acknowledgment of those limitations. Our representation of the County regarding the Bonds will be concluded upon issuance of the Bonds. Nevertheless, subsequent to Closing, we will prepare and distribute to the participants in the transaction a transcript of the proceedings pertaining to the Bonds.

### CONFLICTS

Foster Garvey represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the County, one or more of our present or future clients will have transactions with the County. It is also possible that we may be asked to represent, in an unrelated matter, one or more of those types of clients. For example, from time to time in transactions unrelated to the Bonds, our firm represents D.A. Davidson & Co. and the financial institutions that may be selected to purchase the Bonds. We do not foresee, however, that any such prior or future representation will adversely affect our ability to represent you as provided in this letter, either because such matters were or will be sufficiently different from the issuance of the Bonds so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and

outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the Bonds. Execution of this letter will signify the County's consent to our representation of others consistent with the circumstances described in this paragraph. To the extent we believe such future representation may adversely affect our representation of the County, we will disclose such representation to the County and, if required by ethical rules, seek the appropriate County consent. However, the County's consent to our representation of other clients as described in this paragraph does not extend to our firm's lawyers representing a client in any litigation or similar dispute adverse to the County before any court or similar forum. A separate waiver would need to be sought, based on the facts of the relevant dispute.

If the foregoing terms are acceptable to the County, please cause two copies of this letter to be executed by the appropriate County officials. One copy should be returned to me and the other should be retained in the County's files. We look forward to working with you again.

Sincerely,

FOSTER GARVEY P.C.



By

Lee Marchisio

Accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

FRANKLIN COUNTY, WASHINGTON

\_\_\_\_\_  
Robert E. Koch, Chair  
Board of County Commissioners

The terms of engagement set forth herein are accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 2020, and Foster Garvey P.C. is appointed as special deputy prosecuting attorney for the County pursuant to RCW 36.27.040.

FRANKLIN COUNTY, WASHINGTON

\_\_\_\_\_  
Shawn Sant, Prosecuting Attorney

Filed with the Franklin County Auditor this \_\_\_\_ day of \_\_\_\_\_, 2020.

FRANKLIN COUNTY, WASHINGTON

\_\_\_\_\_  
Matt Beaton, Auditor

SCOPE OF BOND COUNSEL SERVICES  
FOSTER GARVEY PC

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The range of services provided by bond counsel can be narrow or broad, and frequently varies from financing to financing. In addition, the amount of work necessary to perform the same services can be quite different depending upon the nature and complexity of the financing. In the following, we use the term “bonds” to include any obligation of the issuing local government (the “Issuer”) for which we are asked to serve as bond counsel.

**A. BOND COUNSEL SERVICES**

The services Foster Garvey traditionally provides as bond counsel to the Issuer include:

- (1) Advising the Issuer and its consultants on the legal requirements applicable to and, when requested, participating with those consultants and Issuer’s staff in planning, the financing or refinancing of a project, including advice on state law and federal income tax and securities laws;
- (2) Reviewing the transcripts relating to the prior issuance by the Issuer of related outstanding obligations, if any, to assure conformity of the bonds with applicable covenants and conditions;
- (3) Based on facts provided by the Issuer, performing the necessary legal analysis to determine, in financings in which the bonds are intended to be tax-exempt, whether interest on the bonds will qualify for an exclusion from gross income for federal income tax purposes, and preparing tax exemption and nonarbitrage certificates;
- (4) Drafting the ordinances/resolutions and other documents necessary to authorize the bonds to be sold and issued (including, where applicable, ballot title ordinances/resolutions);
- (5) Attending certain meetings relating to the sale and issuance of the bonds;
- (6) Forwarding Issuer financing documents to bond rating agencies and/or bond insurers, when requested by the Issuer or Issuer’s financial consultant or underwriter, and explaining those documents to agency and insurer representatives;
- (7) When requested by the Issuer or Issuer’s financial consultant or underwriter, reading those portions of drafts of the official statement, offering circular or other sales material relating to the bonds prepared by the Issuer’s investment bankers necessary to assure the accuracy only of the description of the bonds, the source of payment and security for the bonds, any continuing disclosure undertaking and the federal tax treatment of the interest on the bonds;
- (8) Preparing closing documents necessary to support the issuance of the bonds and assembling the transcript after the closing; and
- (9) Subject to the completion of proceedings to our satisfaction, furnishing the firm’s approving legal opinion for the bonds regarding the validity and binding effect of the bonds and the excludability of interest on the bonds issued as tax-exempt bonds from gross income for federal income tax purposes.

Our bond opinion will be based on facts and law existing as of its date, and will constitute the expression of our professional judgment on the matters expressly addressed and not a guarantee of result. In rendering that opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume the Issuer's continuing compliance, after the issue date, with applicable laws relating to the bonds. During the course of this engagement, we will rely on the Issuer to provide us with complete and timely information on all developments pertaining to any aspect of the bonds and their security, as well as the expected use of bond proceeds. We understand and expect that officers and employees of the Issuer will cooperate with us in this regard.

## **B. OTHER SERVICES**

Traditional bond counsel services described above do not include the following additional bond and project-related work for the Issuer which we would be pleased to perform on request, working with the Issuer's attorney or other designated representatives. The provision of these services involves appropriate fee arrangements.

(1) The drafting or review for sufficiency of any environmental impact statements or other evidence of compliance with the State and National Environmental Policy Acts, the Shorelines Management Act, Growth Management Act and similar laws;

(2) The drafting or review for accuracy of portions of any official statement, offering circular or other sales material relating to the issuance of the bonds prepared by the Issuer or its underwriter or otherwise used in connection with such bonds, other than the review of those portions of the official statement describing the bonds, the source of payment and security for the bonds, any continuing disclosure undertaking and the expected federal tax treatment of the interest on the bonds is included in our services as bond counsel (See item A.7 above);

(3) Giving advice to the Issuer's consultants regarding the applicability of the registration requirements under federal or state securities laws or regarding federal and state securities disclosure requirements or due diligence review;

(4) Drafting or negotiating of bond purchase agreements (though as a matter of course as bond counsel we typically review such agreements to assure that they conform to the Issuer's bond authorization documents);

(5) Negotiation and drafting of repurchase agreements, investment contracts, custodial agreements, swap agreements, credit enhancement or liquidity facilities (other than bond insurance), and contracts (including contracts with developers or owners of property included within local improvement Counties formed by the Issuer), or disputes or litigation in connection therewith;

(6) Attending rating agency or public information meetings in connection with the issuance of bonds;

(7) Preparation of supplemental opinions required of bond counsel by the Issuer or the underwriter of bonds in connection with their issuance;

(8) The drafting or obtaining of state or federal legislation;

- (9) Participating in administrative proceedings, trial or appellate litigation;
- (10) Drafting special assessment County formation and assessment documents and attending special assessment hearings;
- (11) Work in connection with seeking or obtaining governmental assistance or approvals from governmental agencies other than the Issuer, necessary for carrying out the purposes of the bond issue;
- (12) Providing services relating to public works bidding, negotiating design or construction contracts, or carrying out the acquisition of property or the construction of projects;
- (13) Representing the Issuer in Internal Revenue Service examinations or inquiries, or Securities and Exchange Commission investigations;
- (14) After closing, providing continuing advice to the Issuer or any other party concerning any actions necessary to assure that interest paid on the bonds issued as tax exempt bonds will continue to be excludable from gross income for federal income tax purposes (*e.g.*, our engagement as bond counsel does not include rebate calculations for the bonds, dealing with changes of use or delays in the expenditure of proceeds);
- (15) Assisting the Issuer with its continuing disclosure obligations consistent with applicable securities laws; or
- (16) Addressing any other matter not specifically set forth above that is not required to furnish our bond opinion.

### **C. FILE MANAGEMENT**

After the transaction is concluded, we will deliver to the Issuer a complete copy of the transcript of the transaction. A transcript is delivered generally within 30 to 60 days after closing. We then close our files regarding the matter, and our representation on the transaction is completed. Additional services after closing would be addressed under Part B, above.

Upon request, papers and property furnished by you will be returned promptly. Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us after the termination of this engagement.