

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS
CONSENT AGENDA REQUEST**

TO: Jefferson County Board of Commissioners

THROUGH: Mark McCauley, County Administrator

FROM: Stacie Prada, Treasurer 

DATE: July 24, 2023

SUBJECT: CONTRACT: Underwriter (or "Placement Agent") Services with D.A. Davidson & Co. for the County's proposed offering and issuance of Grant Anticipation Notes

STATEMENT OF ISSUE: The County has a need to address cash flow for the Port Hadlock Sewer Project whereby grant funding will be received as reimbursement after expenditures are made.

ANALYSIS: The funding plan for the Port Hadlock Sewer Project construction includes grants that will be received as reimbursement after expenditures are made. Construction needs to be done and expenditures paid before submitting expenses to funding entities for reimbursement. Financing the project will require addressing cash flow with a line of credit to pay for the project before grant funds are received.

The Board discussed a line of credit for the Port Hadlock Sewer Project on January 9, 2023 and authorized the Treasurer Stacie Prada to investigate a line of credit for the project. DA Davidson is listed on the MRSC Roster for Financing Services, and the county has worked with them in the past for refunding and private placement loans. JCC 3.55.070 purchasing and bidding procedures allows contracting with DA Davidson using the roster and without competitive bidding procedures for contracts of this amount.

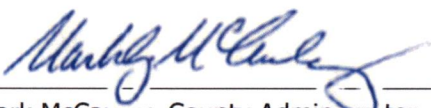
FISCAL IMPACT:

The preferred option estimate is up to \$20,000 for the issuance of debt up to \$10 million for a private placement line of credit. The contract amount could be up to \$35,000, if debt includes a public sale where notes are sold to investors.

RECOMMENDATION:

Approve the contract as presented.

REVIEWED BY:



Mark McCauley, County Administrator

7/19/23

Date

CONTRACT REVIEW FORM

Clear Form

(INSTRUCTIONS ARE ON THE NEXT PAGE)

CONTRACT WITH: D.A. Davidson & Co

Contract No: T 2023.1

Contract For: Underwriter (or "Placement Agent") Services Term: Through closing of the offering of securities

COUNTY DEPARTMENT: Treasurer's Office

Contact Person: Stacie Prada

Contact Phone: 360-385-9154

Contact email: sprada@co.jefferson.wa.us

AMOUNT: \$20,000 estimate, up to \$35,000

Revenue: _____

Expenditure: _____

Matching Funds Required: _____

Sources(s) of Matching Funds: _____

Fund # 405 TRI-AREA SEWER FUND

Munis Org/Obj 40553500/410000

PROCESS:

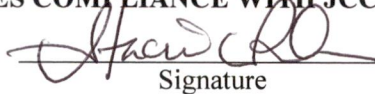
- ☐ Exempt from Bid Process
- ☐ Cooperative Purchase
- ☐ Competitive Sealed Bid
- ☐ Small Works Roster
- ☒ Vendor List Bid
- ☐ RFP or RFQ
- ☐ Other: _____

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☒

N/A: ☐


Signature

7/17/2023
Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☒

N/A: ☐


Signature

7/17/2023
Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

PROFESSIONAL SERVICES AGREEMENT FOR UNDERWRITER

THIS PROFESSIONAL SERVICES AGREEMENT ("this Agreement") is entered into between the County of Jefferson, a municipal corporation ("County"), and D.A. Davidson & Co. ("Contractor"), in consideration of the mutual benefits, terms, and conditions specified below.

1. Project Designation. Contractor is retained by County to perform the following Project: Serve as underwriter (or "placement agent") for the County on the County's proposed offering and issuance of Grant Anticipation Notes (the "Notes").
2. Services to be Provided by Contractor. Contractor agrees to perform the services identified on Exhibit A attached hereto including the provision of all labor.
3. No Advisory or Fiduciary Role. County acknowledges and agrees: (i) the primary role of Contractor, as an underwriter, is to purchase securities, for resale to investors, in an arm's-length commercial transaction between County and Contractor and that Contractor has financial and other interests that may differ from those of County; (ii) Contractor is not acting as a municipal advisor, financial advisor, or fiduciary to County and Contractor has not assumed any advisory or fiduciary responsibility to County with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Contractor has provided other services or is currently providing other services to County on other matters or transactions); (iii) the only obligations Contractor has to County with respect to the transaction contemplated hereby expressly are set forth in this agreement; and, (iv) County has consulted its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate. If County desires to consult with and hire a municipal advisor for this transaction that has legal fiduciary duties to County, County should separately engage a municipal advisor to serve in that capacity.
4. Disclosures Pursuant to MSRB Rule G-17 and G-23. Disclosures required by the Municipal Securities Rulemaking Board (MSRB) Rule G-17 that relate to the proposed offering and issuance of Grant Anticipation Notes (the "Notes") are contained in Exhibit B. County further acknowledges Contractor may be required to supplement or make additional disclosures as may be necessary as the specific terms of the transaction progress.
5. Fees and Expenses.
 - a. Contractor's proposed underwriting fee/spread will be a not to exceed \$3.50 per \$1,000 of Notes (i.e., not to exceed 0.35% times the principal amount of the Notes) assuming a public sale where the Notes are sold to investors.
 - b. If the Notes/Line of Credit financing is structured as a private placement directly to a bank, then the not to exceed fee is \$2.00 per \$1,000 of Notes (i.e., not to exceed 0.20% times the principal amount of the Notes).

- c. County shall be responsible for paying other costs of issuance, including without limitation, note counsel, rating agency (if any), and all other expenses incident to the performance of County's obligations under the proposed offering.
 - d. Final payment of any balance due Contractor of the total fees and expenses shall be made promptly upon its ascertainment and verification by County after the completion of the work and submittal of reports under this Agreement and its acceptance by County.
6. Time for Performance. This Agreement shall commence on the date the last party signs this Agreement and continue through the closing of the offering of the Securities. Time is of the essence in the performance of this Agreement.
7. Compliance with laws. Contractor shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Agreement.
8. Maintenance of Records. Each party shall maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either to perform this Agreement. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of agreement. The Office of the State Auditor, federal auditors, the Jefferson County Auditor, and any persons duly authorized by the parties shall have full access and the right to examine these materials during this period. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed.
9. Independent Contractor. Contractor and County agree that Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Contractor specifically has the right to direct and control Contractor's own activities, and the activities of its subcontractors, employees, agents, and representatives, in providing the agreed services in accordance with the specifications set out in this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. Neither Contractor nor any employee of Contractor shall be entitled to any benefits accorded County employees by virtue of the services provided under this Agreement, including, but not limited to: retirement, vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to Jefferson County employees. County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to Contractor, or any employee of Contractor.

10. Subcontracting Requirements.

- a. Contractor is responsible for meeting all terms and conditions of this Agreement including standards of service, quality of materials and workmanship, costs, and schedules. Failure of a subcontractor to perform is no defense to a breach of this Agreement. Contractor assumes responsibility for and all liability for the actions and quality of services performed by any subcontractor.
- b. Every subcontractor must agree in writing to follow every term of this Agreement. Contractor must provide every subcontractor's written agreement to follow every term of this Agreement before the subcontractor can perform any services under this Agreement. The County Treasurer their designee must approve any proposed subcontractors in writing.
- c. Any dispute arising between Contractor and any subcontractors or between subcontractors must be resolved without involvement of any kind on the part of County and without detrimental impact on Contractor's performance required by this Agreement.

11. Covenant Against Contingent Fees. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County shall have the right to annul this Agreement without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

12. Discrimination Prohibited. Contractor, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, gender, sexual orientation, material status, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.

13. No Assignment. Contractor shall not sublet or assign any of the services covered by this Agreement without the express written consent of County. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.

14. Non-Waiver. Waiver by County of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

15. Termination.

- a. County reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to Contractor.

- b. In the event of the death of a member, partner, or officer of Contractor, or any of its supervisory personnel assigned to the project, the surviving members of Contractor hereby agree to complete the work under the terms of this Agreement, if requested to do so by County. This section shall not be a bar to renegotiations of this Agreement between surviving members of Contractor and County, if County so chooses.
- c. County reserves the right to terminate this contract in whole or in part, with 10 days' notice, in the event that expected or actual funding from any funding source is withdrawn, reduced, or limited in any way after the effective date of this agreement. In the event of termination under this clause, County agrees to reimburse Contractor for its out-of-pocket expenses incurred to the date of termination.

16. Notices. All notices or other communications which any party desires or is required to give shall be given in writing and shall be deemed to have been given if hand-delivered, sent by facsimile, email, or mailed by depositing in the United States mail, prepaid to the party at the address listed below or such other address as a party may designate in writing from time to time.

Notices to County shall be sent to the following address:

Jefferson County Risk Management
P.O. Box 1220
Port Townsend, WA 98368

Notices to Contractor shall be sent to the following address:

James M. Nelson
Columbia Center
701 5th Avenue, Suite 4050
Seattle, WA 98104

17. Integrated Agreement. This Agreement together with attachments or addenda represents the entire and integrated Agreement between County and Contractor and supersedes all prior negotiations, representations, or agreements written or oral. No representation or promise not expressly contained in this Agreement has been made. This Agreement supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, by County within the scope of this Agreement. Contractor ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in its proposal, and the supporting material submitted by Contractor, accepts this Agreement and agrees to all of the terms and conditions of this Agreement.
18. Modification of this Agreement. This Agreement may be amended only by written instrument signed by both County and Contractor.
19. Disputes. The parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions. Any disputed issue not resolved pursuant to the

terms of this Agreement shall be submitted in writing within 10 days to County Risk Manager, whose decision in the matter shall be final, but shall be subject to judicial review. If either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this Agreement, each party in such action shall bear the cost of its own attorney's fees and court costs. Any legal action shall be initiated in the Superior Court of the State of Washington for Jefferson County. The parties agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. Contractor hereby consents to the personal jurisdiction of the Superior Court of the State of Washington for Jefferson County.

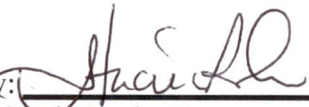
20. Section Headings. The headings of the sections of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of the sections or this Agreement.
21. Limits of Any Waiver of Default. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.
22. No Oral Waiver. No term or provision of this Agreement will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.
23. Severability. Provided it does not result in a material change in the terms of this Agreement, if any provision of this Agreement or the application of this Agreement to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.
24. Survival. Those provisions of this Agreement that by their sense and purpose should survive the term of this Agreement shall survive the term of this Agreement.
25. Binding on Successors, Heirs and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs, and assigns.
26. No Assignment. Contractor shall not sell, assign, or transfer any of rights obtained by this Agreement without the express written consent of County.
27. No Third-party Beneficiaries. The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party.
28. Signature in Counterparts. The parties agree that separate copies of this Agreement may be signed by each of the parties and this Agreement shall have the same force and effect as if all the parties had signed the original.

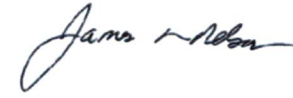
29. Attachments. Any document in this Agreement identified as an attachment is part of this Agreement and is incorporated by reference into this Agreement.
30. Facsimile and Electronic Signatures. The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.
31. Arms-Length Negotiations. The parties agree that this Agreement has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.
32. Public Records Act. Notwithstanding the provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW, as may hereafter be amended, Contractor agrees to maintain all records constituting public records and to produce or assist County in producing such records, within the time frames and parameters set forth in state law. Contractor further agrees that upon receipt of any written public record request, Contractor shall, within two business days, notify County by providing a copy of the request per the notice provisions of this Agreement.
33. Authority. The parties represent and warrant that the person(s) signing this Agreement have the authority to bind the parties and are not party to any disclosed conflict of interest relating to the subject transaction.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

JEFFERSON COUNTY WASHINGTON

D.A. DAVIDSON & CO.

By:  7/17/2023
Stacie Prada, Treasurer Date

By: 
James M. Nelson,
Senior Vice President

Board of County Commissioners
Jefferson County, Washington

Date: July 17, 2023

By: _____
Greg Brotherton, Chair Date

By: _____
Kate Dean, Commissioner Date

By: _____
Heidi Eisenhour, Commissioner Date

SEAL:

ATTEST:

Carolyn Galloway Date
Clerk of the Board

Approved as to form only:

Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney

EXHIBIT A

County has engaged Contractor to serve as an underwriter (or placement agent) on the proposed offering and issuance of the Notes, and in such capacity Contractor agrees to provide the services described in this Exhibit A, and not as a financial or municipal advisor, in connection with the issuance of the Notes. As part of Contractor's services as underwriter or placement agent, Contractor may provide advice concerning the structure, timing, terms, and other similar matters concerning the issuance of the Notes, including:

- Provide various note structures, including payment terms, prepayment options, and estimated interest rates. Provide a comparison of a public Note sale versus a private placement directly to a bank
- Develop a marketing plan for the offering, including identification of potential investors
- Contact potential investors, provide them with offering-related information, respond to their inquiries and, if requested, coordinate their due diligence sessions
- Assist in preparing materials to be provided to the rating agency and in developing strategies for meetings with the ratings agency
- Consult with note counsel and other service providers with respect to the Notes
- Inform County of the marketing and offering process
- Assist County in establishing the structure, timing, terms and other similar matters concerning the Issue
- Prepare the financing schedule
- Provide assistance as to scheduling, coordinating and meeting procedural requirements relating to the financing
- Consult and meet with representatives of County and its agents or consultants with respect to the Issue
- Attend meetings of County's governing body, as requested
- Negotiate the pricing, including the interest rate, and other terms of the Notes
- Assist in the gathering of information with respect to financial, statistical and factual information relating to County in connection with the bank financing or preparation of the preliminary and final official statement (if any)
- At the time of sale, provide County with relevant data on comparable issues recently or currently being sold nationally and by comparable issues
- Obtain CUSIP number(s) for the Notes and arrange for their DTC book-entry eligibility

- Work with note counsel and other transaction participants to prepare and/or review necessary authorizing documentation of County and other documents necessary to finalize and close the Issue
- Plan and arrange for the closing and settlement of the issuance and delivery of the Notes
- Perform such other usual and customary underwriting services as may be requested by County
- As Placement Agent, send out a Request for Proposal Term Sheet to various banks (30+) for an interest rate bid, preferred drawdown option, with the specified term and prepayment option. (With a private placement to a bank, there is no Official Statement and no rating presentation.)

Contractor may provide incidental financial advisory services, including advice as to the structure, timing, terms and other matters concerning the issuance of the Securities. Contractor is required to make the following disclosure pursuant to MSRB Rule G-23: Contractor will be providing such advisory services in its capacity as underwriter and not as a financial advisor to County. As underwriter, Contractor will not be required to purchase the Securities except pursuant to the terms of the Purchase Agreement, which will not be signed until successful completion of the pre-sale offering period. This Agreement does not obligate Contractor to purchase any of the Securities.

EXHIBIT B

1. Dealer-Specific Conflicts of Interest Disclosures

Contractor has identified the following actual or potential material conflicts:

An employee of the underwriter is a Reviewing Member for the Washington Public Treasurer's Association Debt Policy Review Panel. In this capacity, the employee participates in reviewing possible debt policies for potential issuers and is not compensated.

2. Transaction-Specific Disclosures

Since Contractor has not recommended a "complex municipal securities financing" to County, additional disclosures regarding the financing structure for the Notes are not required under MSRB Rule G-17. In accordance with the requirements of MSRB Rule G-17, if Contractor recommends a "complex municipal securities financing" to County, this letter will be supplemented to provide disclosure of the material financial characteristics of that financing structure as well as the material financial risks of the financing that are known to Contractor and reasonably foreseeable at that time.

3. Standard Disclosures

A. Disclosures Concerning the Underwriters' Role:

- (i) MSRB Rule G-17 requires an underwriter to deal fairly at all times with both municipal issuers and investors.
- (ii) An underwriter's primary role is to purchase the Notes with a view to distribution in an arm's-length commercial transaction with County. The underwriter has financial and other interests that differ from those of County.
- (iii) Unlike a municipal advisor, the underwriter does not have a fiduciary duty to County under the federal securities laws and is, therefore, not required by federal law to act in the best interests of County without regard to its own financial or other interests.
- (iv) County may choose to engage the services of a municipal advisor with a fiduciary obligation to represent County's interest in this transaction.
- (v) The underwriter has a duty to purchase the Notes from County at a fair and reasonable price, but must balance that duty with its duty to sell the Notes to investors at prices that are fair and reasonable.
- (vi) The underwriter will review the official statement for the Notes in accordance with, and as part of, its respective responsibilities to investors under the federal

securities laws, as applied to the facts and circumstances of this transaction.¹

B. Disclosures Concerning the Underwriters' Compensation:

The underwriter will be compensated by a fee and/or an underwriting discount that will be set forth in the Note purchase agreement to be negotiated and entered into in connection with the issuance of the Notes. Payment or receipt of the underwriting fee or discount will be contingent on the closing of the transaction and the amount of the fee or discount may be based, in whole or in part, on a percentage of the principal amount of the Notes. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the underwriter may have an incentive to recommend to County a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

4. Questions and Acknowledgment.

Contractor is registered as a broker-dealer with the U.S. Securities and Exchange Commission ("SEC") and the MSRB, and is subject to the regulations and rules on municipal securities activities established by the SEC and MSRB. The website address for the MSRB is www.msrb.org. The MSRB website includes educational material about the municipal securities market, as well as an investor brochure that describes the protections that may be provided by the MSRB rules and how to file a complaint with an appropriate regulatory authority.

If you or any other Issuer officials have any questions or concerns about these disclosures, please make those questions or concerns known immediately to the undersigned. In addition, you should consult with County's own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent you deem appropriate.

Contractor is required to seek your acknowledgement that you have received this letter. Accordingly, please send me an email to that effect, or sign and return the enclosed copy of this letter to me at the address set forth below. Otherwise, an email read receipt from you or automatic response confirming that our email was opened by you will serve as an acknowledgement that you received these disclosures.

Depending on the structure of the transaction that County decides to pursue, or if additional actual or potential material conflicts are identified, Contractor may be required to send you additional disclosures regarding the material financial characteristics and risks of such transaction and/or describing those conflicts. At that time, Contractor also will seek your acknowledgement of receipt of any such additional disclosures.

¹ Under federal securities law, an issuer of securities has the primary responsibility for disclosure to investors. The review of the official statement by the underwriter is solely for purposes of satisfying the underwriter's obligations under the federal securities laws and such review should not be construed by an issuer as a guarantee of the accuracy or completeness of the information in the official statement.