JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS

CONSENT AGENDA REQUEST

TO: **Board of County Commissioners**

FROM: **Mark McCauley, County Administrator**

DATE: **December 11, 2023**

SUBJECT: **Contract for Bond Counsel**

STATEMENT OF ISSUE:

The County requires bond counsel services. The most immediate need for such services is for assistance with establishing a Line of Credit for the Port Hadlock sewer.

ANALYSIS:

Stacie Prada, the County Treasurer, would like to continue our long standing relationship with Mark Greenough of Foster Garvey. James Kennedy, the Prosecuting Attorney approves, subject to a special deputy prosecuting attorney appointment required by RCW 36.27.040. Mr. Greenough and his team have done and outstanding job for the County over the years. The attached contract would continue the relationship on essentially the same terms as the last contract, which was entered into in 2017. An approved special deputy appointment has been signed by the necessary persons at Foster Garvey, including Mr. Greenough. The appointment will be signed and filed with the County Auditor's Office as required by RCW 36.27.040 shortly after approval of the attached contract.

FISCAL IMPACT:

Loan costs including interest and professional services will be incorporated into loan closing documents and born by the Sewer Fund.

RECOMMENDATION:

That the Board of County Commissioners approve the attached contract.

REVIEWED BY:

Mark McCauley 12/7/23

Mark McCauley, County Administrator Date

Clear Form

CONTRACT REVIEW FORM

(INSTRUCTIONS ARE ON THE NEXT PAGE)

CONTRACT WITH: Foster Garvey PC Contract No: PAO-2023-12-02

Contract For: Legal Services Term: Until 10/15/2026 with two possible renewals

COUNTY DEPARTMENT:	Treasure's Office
Contact Person:	Stacey Prada
Contact Phone:	360-385-2154
Contact email:	sprada@co.jefferson.wa.us

AMOUNT: Per Contract to be paid from the Sewer Fund

Revenue:	$0
Expenditure:	Per Contract
Matching Funds Required:	$0
Sources(s) of Matching Funds	N/A
Fund #	
Munis Org/Obj	

PROCESS:

- [x] **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:** ■ P.C. Hunsaker December 6, 2023

Signature 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:** ■ P.C. Hunsaker December 6, 2023

Signature Date

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

Electronically approved by Risk Management on 12/7/2023.

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

Electronically approved as to form by PAO on 12/6/2023.
PAO already approved as to form.

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

LEGAL SERVICES CONTRACT

This Legal Services Contract ("this contract") is made and entered into by and between Jefferson County, a political subdivision of the State of Washington ("the County") and Foster Garvey PC ("the Law Firm"). The County and the Law Firm hereby agree to the following terms and conditions:

1. Services Provided

A. The primary purpose of this contract is to provide legal advice, consultation and services to the County, specifically, (1) bond counsel services described in section A of the Scope of Services attached as Exhibit 1 to this this contract; (2) other finance counsel services described in section B of Exhibit 1; and, (3) other legal services as expressly requested by the County.

B. The Jefferson County Prosecuting Attorney shall be the overall client representative for services performed under this contract. The Jefferson County Treasurer shall be the County's day-to-day representative for bond counsel services described in Exhibit 1.

C. The Law Firm will keep the County well informed of all legal matters it handles on the County's behalf. The Law Firm shall send the County copies of all material papers coming in or going out of its offices to or from third parties. The Law Firm shall, at such times and in such form as the County may require, furnish the County with periodic reports pertaining to the work and services undertaken pursuant to this contract.

D. The specific attorneys at the Law Firm responsible for bond counsel services are: Marc Greenough, Lee Marchisio, Stacie Amasaki, and Tina Kyle, and those attorneys shall be appointed as special deputy prosecuting attorneys in connection with the work to be performed under this contract. If the Law Firm proposes to have other lawyers at that firm perform material amounts of work for the County, the Law Firm shall submit the names of the relevant attorneys to the Prosecuting Attorney for approval.

2. Compensation and Payment

Compensation for the bond counsel services described in Section A of Exhibit 1 will be payable as set forth in Exhibit 2 only upon the issuance of the bonds or notes with respect to which the services are rendered.

Compensation for the non-bond counsel finance-related services described in Section B of Exhibit 1, and for the other services requested by the Prosecuting Attorney, will be billed monthly based on the Law Firm's standard hourly rates for those services, reduced by 10%, but in any event no greater than $360 per hour, plus actual out-of-pocket expenses. As specific projects are proposed for assistance by the Law Firm, the Prosecuting Attorney and the Law Firm shall discuss budgets for that work and/or rate adjustments. If as a part of such other legal services the firm agrees to perform a "due diligence" review of any official statement, offering circular, bond prospectus or other sales material, the furnishing of the firm's legal opinion provided for in Section 1 shall be conditioned on its satisfaction of the sufficiency of such statement, circular, prospectus or other materials.

For work billed on an hourly basis, the Law Firm will provide a detailed invoice identifying the work performed, the date accomplished, and the hours charged. The Law Firm will also detail and provide documentation for any costs. The County will pay the Law Firm within 30 days after receipt of properly completed invoices for legal services. Invoices for work performed on an hourly basis shall be submitted to the Prosecuting Attorney for review and approval by that department and subsequent transmittal by that office to the Clerk to the County Commission. Bond counsel services bills shall be submitted to the Clerk to the County Commission.

Payment shall be considered timely if made by the County within 30 days after receipt of a properly completed invoice.

Advance Payment Prohibited. No payment in advance or m anticipation of services or supplies under this contract shall be made by the County.

3. Term of Contract

The term of this contract shall be from the date of execution to October 15, 2026, with up to two renewals for one year each. All reasonable and necessary services provided for the matter prior to the date of execution are hereby ratified. Either party may terminate this contract prior to that date upon 30 days written notification. It is agreed that the Law Firm will be compensated for services provided through the date of notification of termination at the applicable hourly rates. However, in the case of bond counsel services, the Law Firm will be compensated on an hourly basis at the time bonds are issued, for the work that the Law Firm performed with respect to that bond issue, but in no event greater than the fee calculated in accordance with the fee schedule set forth above. Compensation for any services provided after notification of termination shall be pursuant to agreement of the parties.

4. Contract Amendments

Modifications to this contract, including changes to the scope of representation or the maximum compensation, and term of this contract shall be made by written agreement executed by both parties.

5. Applicable Law and Venue

This contract shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Jefferson County Superior Court.

6. Independent Capacity of the Law Firm

The Law Firm and its employees or agents performing under this contract are not employees or agents of the County. The Law Firm will not hold itself out as, nor claim to be, an officer or employee of the County by reason of this contract, nor will the Law Firm make any claim of right, privilege, or benefit which would accrue to an employee or official of the County.

7. Conflicts of Interest

The parties recognize that the Law Firm may be asked to represent clients in cases or on matters adverse to the County. The Law Firm shall notify the County when the Law Firm is asked to participate in cases or matters adverse to the County by advising the Prosecuting Attorney of the nature of the matter or the name of the case, and will request a written waiver from the County prior to undertaking work on such case or matter. The County recognizes and approves the Law Firm's representation of the City of Port Townsend and the Jefferson County Public Utility District on finance and other matters (including land use and Growth Management Act representation of the City of Port Townsend), and the County waives any conflict of interest that may exist by virtue of the Law Firm's existing representation of those two public entities. The Law Firm from time to time also represents private sector clients with real estate transactions with the County or with land use matters before the County. Although the grant of a waiver of a conflict of interest will be the County's to make, the County will ordinarily be expected to allow lawyers in the Law Firm to assist such private sector clients so long as the representation does not constitute a challenge to the County's underlying regulatory authority or does not involve a matter of substantial controversy. Finally, the Law Firm represents D.A. Davidson & Co. and other underwriters and placement agents and may represent banks that are direct purchasers of the County's bonds, in each case on matters unrelated to the County. The County recognizes and approves the Law Firm's representation of such clients on unrelated matters.

8. Confidentiality

The Law Firm shall maintain as confidential all information concerning its advice and recommendations, as well as information related to the business of the County, its financial affairs, relations with its clientele and its employees, and any other information which may be specifically classified as confidential by the County in writing to the Law Firm. To the extent consistent with RCW 42.56 (Public Records Act), the County shall maintain all information which the Law Firm specifies in writing as confidential. This contract is a Public Record in accordance with the Public Records Act.

9. Liability, Insurance and Warranty

By accepting the terms of this resolution, Foster Garvey PC warrants and agrees that: (1) the firm is an independent contractor and no member or employee of the firm shall be deemed to be an employee of the County; (2) the work to be performed by the firm shall be performed only by attorneys experienced as bond counsel or by attorneys or legal assistants under the direct supervision and control of experienced bond lawyers; (3) Foster Garvey PC shall indemnify the County from any and all liabilities (including but not limited to all claims, suits, actions, administrative proceedings and all attorney's fees, costs, losses, expenses, awards and judgments associated therewith) caused by the errors or negligent acts or omissions of the firm in connection with its performance or lack of performance as bond counsel pursuant to this resolution; and (4) the firm will have in effect professional liability insurance ("errors and omissions") with minimum limits of liability of at least $1,000,000.

10. Authority to Bind Law Firm

The person executing this contract is authorized to: (A) execute same and by doing so; (B) bind the Law Firm to the terms, obligations and conditions of this Legal Services Contract.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

By: ______________________________
Greg Brotherton, Chair Date

By: ______________________________
Kate Dean, Commissioner Date

By: ______________________________
Heidi Eisenhour, Commissioner Date

SEAL:

ATTEST:

____
Carolyn Galloway, CMC Date
Clerk of the Board

Approved as to form only:

P. C. Hunsucker 9/30/2023
____
Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

FOSTER GARVEY PC,
Federal Tax ID: 91-0876461 (Law Firm)

By: Diana S. Shukis 12/4/23
Diana S. Shukis, Date
Firm Co-Chair and Principal

EXHIBIT 1

SCOPE OF BOND COUNSEL/FINANCE COUNSEL SERVICES

In the following, the term "bonds" includes any obligation of the County for which the Law Firm is asked to serve as bond counsel.

A. BOND COUNSEL SERVICES

(1) Advising the County and its consultants on the legal requirements applicable to and, when requested, participating with those consultants and the County's staff in planning, the financing 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 County of related outstanding obligations (typically revenue obligations), 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 the County's financing documents to bond rating agencies and/or bond insurers, when requested by the County or the County's financial consultant or underwriter, and explaining those documents to agency and insurer representatives;

(7) When requested by the County or the County'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 County'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) Reviewing special assessment district formation and assessment documents that have been prepared by county staff or attorneys;

(9) Preparing closing documents necessary to support the issuance of the bonds and assembling the transcript after the closing; and,

(10) 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 from gross income for federal income tax

purposes. The Law Firm's 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, the Law Firm 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 the Law Firm will assume the County's continuing compliance, after the issue date, with applicable laws relating to the bonds. During the course of this engagement, the Law Firm will rely on the County to provide the Law Firm 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. The Law Firm understands and expects that officers and employees of the County 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 County which the Law firm will perform on request, working with the County's Prosecuting 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 County 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 County'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 the Law Firm typically reviews such agreements to assure that they conform to the County'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 districts formed by the County), 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 the Law Firm (as bond counsel) by the County 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 district 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 County, 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 County in Internal Revenue Service examinations or inquiries, or Securities and Exchange Commission investigations;

(14) After closing, providing continuing advice to the County or any other party concerning any actions necessary to assure that interest paid on the 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 County 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, the Law Firm will deliver to the County a complete copy of the transcript of the transaction. A transcript is delivered generally within 30 to 60 days after closing. The Law Firm will then close its files regarding the matter, and the Law Firm's work on that specific transaction will be completed. Additional services after closing would be addressed under Part B, above.

EXHIBIT 2

FEES FOR BOND COUNSEL SERVICES

Bond counsel services will be compensated in accordance with the following schedule:

Type of Issue	Par Amount	Base Fee	Add'l per $1,000 Par Amt
General Obligation Bonds:	$1,000,000	$7,500	+ 2.40
	$5,000,000	$17,100	+ 1.20
	$10,000,000	$23,100	+ 0.85
	$25,000,000	$35,850	+ 0.55
	$50,000,000	$49,600	+ 0.45
	$75,000,000	$60,850	+ 0.35
	$100,000,000	$69,600	+ 0.25
	Above $100,000,000	Negotiable	

Type of Issue	Par Amount	Base Fee	Add'l per $1,000 Par Amt
Revenue Bonds:	$1,000,000	$9,000	+ 2.88
	$5,000,000	$20,520	+ 1.44
	$10,000,000	$27,720	+ 1.02
	$25,000,000	$43,020	+ 0.66
	$50,000,000	$59,520	+ 0.54
	$75,000,000	$73,020	+ 0.42
	$100,000,000	$83,520	+ 0.30
	Above $100,000,000	Negotiable	

Adjustments to Base Fee Schedule

The following adjustments shall be made in the above schedule under the following circumstances: (1) The fee for refunding issues (or refunding portions of combined refunding - new money issues) shall be the amount calculated on the schedule times 1.2; (2) the fee for "build America bonds" and similar credit subsidy bonds shall be calculated on the schedule times 1.5; and, (3) the fee for Notes shall be the amount calculated on the schedule times .66, and if Notes are rolled over, the fee will be over half the fee charged for the original issue of Notes. However, the maximum compensation for any bond issue shall not exceed $35,850 without further express authorization by the Board of County Commissioners. Bond counsel also shall be reimbursed for any actual out-of-pocket expenses, such as travel, document production and reproduction, and communications, incurred by it in rendering its services. The payment of the fee is contingent on the successful delivery of the Bonds and Notes, respectively.