


**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: 07/22/13**

<b>AGENDA ITEM:</b> Bond Counsel Services	
<b>PREPARED BY:</b> Sandy Langdon <b>DEPARTMENT:</b> Finance	<b>DIRECTOR APPROVAL:</b> 
<b>ATTACHMENTS:</b> Agreement	
<b>BUDGET CODE:</b> 40143410.541000	<b>AMOUNT:</b> \$50,000.00

**SUMMARY:**

The Utility Fund currently has revenue bonds that were issued in 2005 that has been identified for refinancing opportunities. These bonds were issued at original par of \$48,355,000. Approximately \$41.9 million is available for refunding. Current market indicates a potential minimum savings of \$1.6 million over the remaining 15 year maturity of the bonds and an annual savings of \$120,000.

With this potential savings it is prudent for the city to consider refinancing these bonds and prepare itself to be posed to refund the bonds at the most advantages opportunity. Part of the preparation is to have a bond counsel agreement in place.

Based upon the amount available for refunding the estimated cost for bond counsel services is \$50,000.

**RECOMMENDED ACTION:**

Staff recommends that council consider authorizing the Mayor to enter into an agreement with Foster Pepper PLLC as bond counsel for the refunding of the 2005 Water and Sewer Bonds.



May 17, 2013

Ms. Sandy Langdon  
Finance Director  
City of Marysville  
1049 State Avenue  
Marysville, WA 98270

Re: Water and Sewer Revenue Refunding Bonds, 2013

Dear Sandy:

We appreciate the opportunity to serve again as Bond Counsel to the City of Marysville, Washington (the "City"). Our firm asks that each time we open a new matter, we have an engagement letter to set forth certain matters concerning the services we will provide. In this instance, we will serve as Bond Counsel in connection with the City's proposed Water and Sewer Revenue Refunding Bonds, 2013 (the "Bonds").

In this engagement, we would expect to perform the following duties: (i) subject to the completion of proceedings to our satisfaction, render our legal opinion (the "Bond Opinion") regarding the validity and binding effect of the Bonds (including any interim notes), the source of payment and security for the Bonds, and the excludability of interest on the Bonds from gross income for federal income tax purposes; (ii) prepare and review documents necessary or appropriate to the authorization, issuance and delivery of the Bonds, coordinate the authorization and execution of such documents and assemble a transcript of proceedings pertaining to the Bonds; (iii) review legal issues relating to the structure of the Bond issue; and (iv) attend such meetings of the City as necessary to accomplish the aforementioned tasks and to close the issuance of the Bonds. A more detailed description of the scope of our services is attached. Lindsay Coates, Alice Ostdiek and I would be the lawyers working on the transaction, and Cindy Nevins would be the paralegal.

Upon execution of this engagement letter, the City will be our client and an attorney-client relationship will exist between us. In this transaction we represent only the City. We are not counsel to any other party, and we are not acting as an intermediary among the parties. Our services as Bond Counsel are limited to those contracted for in this letter. The City's execution of this engagement letter will constitute an acknowledgment of those limitations.

Our firm represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the City, one or more of our present or future clients will have transactions with the City. It is also possible that we may be asked to

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represent, in an unrelated matter, one or more of the entities involved in the issuance of the Bonds (*e.g.*, we may, from time to time, serve as counsel to the recipient of the Bonds with respect an unrelated matter). We do not foresee that any such representation, if it occurs, will adversely affect our ability to represent you as provided in this letter, either because such matters 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 City's consent to our representation of others consistent with the circumstances described above in this paragraph. To the extent we believe any future representation may adversely affect our representation of or obligations to the City, we will promptly disclose such representation to the City and, if required by the Rules of Professional Responsibility applicable to lawyers, seek the appropriate City consent.

For bond counsel services, we propose to charge according to the same fee schedule we are using for the LID 71 bonds, adding detail for bonds between \$25 million and \$50 million and with a fee cap at the fee for a \$50 million issue. We do not want to use our 2013 "standard" fee schedule because it would yield a fee that, in Alice's and my view, would be too high, given that we are doing a number of other bond issues for the City, and because the City is particularly well-managed and very efficient to work with. Here is the schedule we would like to use:

<u>Issue Size</u>	<u>Bonds Fee</u>
\$ 1MM - \$4.999MM	\$9,000 + 2.88 per \$1,000 in excess of \$ 1MM
\$ 5MM - \$9.999MM	\$20,520 + 1.44 per \$1,000 in excess of \$ 5MM
\$ 10MM - \$25MM	\$27,720 + 1.02 per \$1,000 in excess of \$ 10MM
\$ 25MM - \$50MM	\$43,020 + 0.40 per \$1,000 in excess of \$25MM
Above \$50MM	Capped at fee for \$50MM

For advance refunding bonds such as the Bonds, we typically use the same schedule, but we multiply the amount of fee times 1.2. In this instance, we would use a multiplier of only 1.1.

If the bonds are not issued because the City determines that it does not make financial sense for it to proceed, we will not charge any fee. We would be reimbursed for actual out-of-pocket costs, whether or not the bonds are issued.

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

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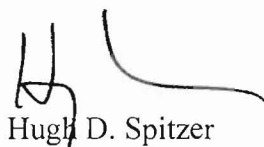
engagement. Following the Closing, we will cause to be delivered to the City's Finance Director as provided under the headings Scope of Engagement and Attorney-Client Relationship, and in accordance with our usual practice, a transcript of proceedings pertaining to the issuance of the Bonds.

If the foregoing terms are acceptable to the City, please have both originals of this engagement letter dated and signed by you or another appropriate City official, and return one original to me, retaining the other for the City's files.

We all look forward to working with all involved in this financing. Please call whenever there are questions, or if we might be able to assist the City.

Sincerely,

FOSTER PEPPER PLLC



Hugh D. Spitzer

Encl.

cc: Grant K. Weed, Marysville City Attorney  
Alice Ostdiek  
Lindsay Coates

The terms of engagement set forth herein  
are accepted and approved by the City  
this \_\_\_\_ day of May, 2013.

CITY OF MARYSVILLE,  
WASHINGTON

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

## **SCOPE OF BOND COUNSEL SERVICES FOSTER PEPPER PLLC**

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**

Those services which Foster Pepper PLLC 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 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 (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 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 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 districts 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 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 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 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.