RESOLUTION NO. 2875

Resolution Authorizing the Mayor to sign a Three-Page Letter Agreement dated October 21, 2021, between the City of Selah and the law firm of Foster Garvey P.C., Engaging such law firm to Provide Bond Counsel Services Relative to the City's Wastewater Collection System Improvements Project.

WHEREAS, the City has planned a Wastewater Collection System Improvements Project; and

WHEREAS, federal regulations require the City, as part of such project, to engage bond counsel to render an informed opinion as to the validity of bond that will be secured for and applicable to such project; and

WHEREAS, the law firm of Foster Garvey P.C. is willing and able to provide such services and has proposed a three-page letter agreement dated October 21, 2021; and

WHEREAS, the terms of such proposed agreement are acceptable to City staff and City staff has recommended that it be accepted and entered into;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor be and is authorized to sign, on behalf of the City, the three-page letter agreement with the law firm of Foster Garvey P.C. dated October 21, 2021.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 26th day of October 2021.

Sherry Raymond

Sherry Raymond, Mayor

ATTEST:

Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

Rob Case, City Attorney

Foster Garvey

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October 21, 2021

VIA EMAIL

Mayor Sherry Raymond
City of Selah
115 W. Naches Ave.
Selah, WA 98942

Re: Engagement Letter for Bond Counsel Services Regarding Revenue Bond and Note Financing

Dear Mayor Raymond:

We appreciate the opportunity to serve as bond counsel to the City of Selah, Washington (the "City"), in connection with the proposed issuance of a taxable revenue bond in the maximum principal amount of $2,111,000 (the "Bond") and a tax-exempt note in the maximum principal amount of $2,111,000 (the "Note", and together with the Bond, the "Obligations") to finance costs of certain sewer system improvements. The purpose of this engagement letter is to set forth certain matters concerning the services we will perform as bond counsel to the City in connection with the issuance of the Obligations. We understand the Bond will be purchased by the United States of America through the U.S. Department of Agriculture, Rural Development ("USDA"). USDA regulations require the City to retain bond counsel to render an opinion that the Bond is valid. USDA regulations also require the City to secure "interim financing" (typically a line of credit with a local bank) to cover costs during the construction period, pending the issuance of the Bond. We understand the City intends to provide interim financing by issuing the Note to a bank to satisfy USDA's interim financing requirements during the construction period.

SCOPE OF ENGAGEMENT

In this engagement, we expect to perform the following duties: (i) subject to the completion of proceedings to our satisfaction, render our legal opinions (each, an "Opinion") regarding the validity and binding effect of the Obligations, the source of payment and security for the Obligations, and the excludability of interest on the Note from gross income for federal tax income purposes; (ii) prepare and review documents necessary or appropriate to the authorization, issuance and delivery of the Obligations, and coordinate the authorization and execution of such documents; and (iii) review legal issues relating to the structure of the Obligations.

Our Opinions will be addressed to the City and will be delivered by us on the date the relevant Obligations are exchanged for their purchase price (each, a "Closing"). The Opinions will be based on facts and law existing as of its date. In rendering each 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 continuing

compliance by the City after the Obligations are issued with applicable laws relating to the Obligations. During the course of this engagement, we will rely on the City to provide us with complete and timely information on all developments pertaining to any aspect of the Obligations and their security. We understand that officials and employees of the City will cooperate with us in this regard.

ATTORNEY-CLIENT RELATIONSHIP

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 regarding the Obligations 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 representation of the City regarding the Obligations will be concluded upon issuance of the Obligations. Nevertheless, subsequent to the Closing of each Obligation, we will prepare and distribute to the participants in the transaction a transcript of the proceedings pertaining to the Obligations, and with respect to the Note, we will mail the appropriate Internal Revenue Service Form 8038.

CONFLICTS

Foster Garvey P.C. 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 represent, in an *unrelated* matter, one or more of those types of clients. For example, from time to time we serve as counsel to bond underwriters or purchasers, including the expected purchaser of the Note, Banner Bank, or we represent neighboring governments, or we assist developers in land use or environmental matters. We do not foresee, however, that any such prior or future representation will adversely affect our ability to represent the City as provided in this letter, either because such matters were or will be sufficiently different from the issuance of the Obligations so as to make such representations not adverse to our representation of the City, 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 Obligations. Execution of this letter will signify the City'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 City, we will disclose such representation to the City and, if required by ethical rules, seek the appropriate City consent. However, the City'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 City before any court or similar forum. A separate waiver would need to be sought, based on the facts of the relevant dispute.

RECORDS

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.

FEES

Based upon (i) our current understanding of the terms, structure, size and schedule of the financing represented by the Obligations, (ii) the duties we will undertake pursuant to this engagement letter and (iii) the responsibilities we will assume in connection therewith, our fee will be $14,500 for all legal services relating to the authorization, issuance and delivery of the Bond. Our fee will be $12,500 for legal services relating to the authorization, issuance and delivery of the Note.

Our fee may increase if: (i) the principal amount of the Obligations are significantly greater than the current estimate of $2,111,000; (ii) a supplemental loan from the USDA requires the issuance of one or more series of additional bonds or notes; (iii) material changes in the structure or schedule of the financing occur; or (iv) 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 estimate, we will advise you. Our invoice for legal services will be presented to the City following the Closing. If for any reason, however, the financing represented by the Obligations is completed without the delivery of our 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, (i) we submit a billing statement to the City that describes the time, legal services and expenses incurred on your behalf, and (ii) such compensation shall not exceed the amount of the fee that would have been paid had the Obligations closed with our Opinion.

If the foregoing terms are acceptable, the Mayor should countersign and date below. Please return one copy to me and retain the original in the City's files. We look forward to working with you.

FOSTER GARVEY P.C.

Lee Marchisio

Lee Marchisio

Accepted and approved this 21 day of OCT, 2021.

CITY OF SELAH, WASHINGTON

Sherry Raymond

Sherry Raymond, Mayor

From:	Lee Marchisio
To:	Wallace, Rocky
Subject:	Selah - USDA Bond - bond counsel engagement letter
Date:	Thursday, October 21, 2021 6:14:54 PM
Attachments:	City of Selah - USDA bond 2022 - bond counsel engagement letter.pdf

Hi Rocky,

Attached is a proposed bond counsel engagement letter for the City's upcoming USDA Bond and related interim financing Note. Please let me know if you, Dale, the Mayor or the city attorney have any questions or comments. If the terms are acceptable, please have the Mayor countersign the letter. Please then have a PDF scan returned to me via email. The original may be kept for the City's files.

Thank you,

Lee

Lee Marchisio
(he/him/his)
Principal

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