



**CLARK COUNTY
STAFF REPORT**

DEPARTMENT: Treasurer

DATE: 12/16/2014

REQUEST: Authorize Chair of the Board of County Commissioners of Clark County, Washington, retaining Foster Pepper PLLC as bond and special counsel for the County.

CHECK ONE: X Consent CAO

BACKGROUND

Under Request for Proposal No. 682, with a review panel consisting of members from the Prosecuting Attorney's Office, the Auditor's Office, County Manager's Office and the Treasurer's Office, the four law firms responding were evaluated and Foster Pepper PLLC was selected as the law firm recommended to serve as bond and special counsel for Clark County. Foster Pepper PLLC is a highly respected firm nationally and has in-depth knowledge of Clark County's history.

The attached Resolution has been approved by the Clark County Prosecuting Attorney and signed by the Presiding Judge of the Superior Court of the State of Washington in and for Clark County.

COMMUNITY OUTREACH

None

BUDGET AND POLICY IMPLICATIONS

Certain professional advice is covered within the Treasurer's adopted budget but is customarily a cost that is included in the bond issue that is ultimately sold.

Department specific advice requires Prosecuting Attorney's approval and hourly fees associated for specific attorney services are identified in the contract.

FISCAL IMPACTS

Yes (see attached form) No


ACTION REQUESTED

Authorize Chair of the Board of County Commissioners of Clark County, Washington, retaining Foster Pepper PLLC as bond and special counsel for the County.

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N*

DISTRIBUTION

Upon acceptance please forward to: Auditor's Office, Office of Budget, Prosecuting Attorney's Office and Treasurer's Office.



 John Payne
 Deputy Treasurer

Approved: 

 CLARK COUNTY
 BOARD OF COMMISSIONERS

Dec. 16, 2014 SR 309-14

FISCAL IMPACT ATTACHMENT

Part I: Narrative Explanation

1. A – Contractual services for bond and special counsel are included in the biennial budget for 2015/16.

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
		N/A				
Total		N/A				

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
General Fund			None				
Total			None				

III. B – Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total		None				

CLARK COUNTY, WASHINGTON

RESOLUTION NO. 2014-12-11

A RESOLUTION of the Board of County Commissioners of Clark County, Washington, retaining Foster Pepper PLLC as bond and special counsel for the County.

WHEREAS, it is deemed necessary and in the best interests of Clark County, Washington (the "County"), and its inhabitants that the County from time to time issue and sell its bonds or bond anticipation notes for proper County purposes; and

WHEREAS, it is deemed necessary and advisable that attorneys who are skilled in such matters be employed as bond counsel to participate with the County Prosecuting Attorney in drafting the resolutions and other documents necessary for the issuance and sale of such bonds and notes, that firm to furnish its legal opinion of the validity of those bonds or notes at the time of their issuance and sale; and

WHEREAS, the law firm of Foster Pepper PLLC of Seattle, Washington, is skilled in providing legal advice with respect to governmental financing of this type, and the legal opinions of that firm are nationally recognized by investors in municipal securities; and

WHEREAS, it is deemed in the best interests of the County that counsel experienced in such matters be retained to provide special bond counsel services; and

WHEREAS, RCW 36.32.200 requires a written contract of employment between the County's legislative authority and special counsel to be executed by the parties; and approved by the presiding superior court judge of the County, for such employment;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, WASHINGTON, as follows:

Section 1. Employment of Bond Counsel; Scope of Bond Counsel Services; Responsible Attorneys. The law firm of Foster Pepper PLLC of Seattle, Washington, is employed by the County as bond counsel ("Bond Counsel") to participate with the County Prosecuting Attorney in drafting the resolutions and other documents required by the County in connection with the issuance and sale of its bonds (the "Bonds"), bond anticipation notes (the "Notes") and other obligations (such as, other notes, warrants and installment contracts), and to furnish its legal opinion on the validity of the Bonds and Notes and the exclusion from gross income for federal income tax purposes of the interest thereon at the time of the delivery thereof to the purchasers thereof when that interest qualifies for such exclusion. Included in the services to be rendered by Bond Counsel are the services described in Exhibit A to this resolution. Services not included in the scope of traditional Bond Counsel services are described in Exhibit B to this resolution and shall be subject to compensation under Section 4.

William Tonkin will serve as the responsible attorney and primary contact person in connection with Bond Counsel's work for County, and Marc Greenough will serve as the primary back-up attorney. Other attorneys and legal assistants will be assigned to perform work for the County under this contract as deemed appropriate by the responsible attorneys. Bond Counsel will notify the County of any proposed changes in the responsible attorney or primary back-up attorney. As described under Scope of Work in Exhibit C hereto, the County may, at any time, request a change in Bond Counsel's responsible or primary back-up attorney.

Section 2. Fees for Bond Counsel Services.

(a) The County shall pay Foster Pepper PLLC as compensation for its Bond Counsel services for each Bond issue in accordance with the following schedule:

Amount of Bond Issue	Fees
\$100,000 or less	\$7,800
\$100,001 to \$5,000,000	\$7,800 plus \$2.00 per \$1,000, or any portion thereof, issued in excess of \$100,000
\$5,000,001 to \$10,000,000	\$17,600 plus \$1.25 per \$1,000, or any portion thereof, issued in excess of \$5,000,000
\$10,000,001 to \$20,000,000	\$23,850 plus \$0.75 per \$1,000, or any portion thereof, issued in excess of \$10,000,000
Over \$20,000,000	Negotiable

The above schedule shall be adjusted under the following circumstances: (1) the fee for revenue bonds and local improvement or road improvement bonds shall be the amount calculated on the schedule times 1.15; (2) the fee for refunding issues shall be the amount calculated on the schedule times 1.25; (3) the fee for Notes shall be the amount calculated on the above schedule for the size of the issue times 0.66, and if Notes are rolled over, the fee will be the amount calculated on the schedule times 0.5; (4) the fee for tax anticipation or grant anticipation financings shall be compensated at the greater of the fee for Notes calculated under paragraph (3), or the hourly charge computed in the same manner as for non-Bond Counsel services under Section 4.

(b) For other bonds and obligations, such as variable rate bonds, escrow restructurings, defeasance of bonds or notes without refunding issues, lease-purchase and installment purchase contracts, certificates of participation, "commercial paper" financings, swaps and other derivatives, and financings involving guaranteed investment contracts or other extraordinary devices, Bond Counsel will negotiate with the County Treasurer for a fee related to the time necessary to carry out the financing.

(c) Traditional bond counsel services for local and road improvement districts include preparation or review of formation documents (e.g., petitions, notices to property owners, formation ordinances) and final assessment roll documents (e.g., notices to property owners, final assessment roll ordinances), but do not include drafting and/or review of any contracts with owners of property within the local improvement district or others, attending formation or assessment roll hearings; extensively advising staff, property owners or other parties about formation and assessment roll techniques and considerations; property owner, investor or other party negotiations; dispute resolution (including litigation); and extensive post-insurance consultation. Those additional services will be subject to hourly charges as described under Section 4.

(d) Bond counsel also shall be reimbursed for any reasonable, actual out-of-pocket expenses, such as travel, document production and reproduction, and communications, incurred by it in rendering its services. Bond Counsel’s reimbursement rates for such expenses shall be as follows:

Copies	\$.10/page	Express Mail	Cost
Telephone	Cost	Deliveries	Cost
Library Research	Cost + 10%		

(e) The payment of Bond Counsel’s fee (other than its fees for non-Bond Counsel services) is contingent on the successful issuance of the Bonds, Notes or other obligations, respectively, and the County will be billed for such fees on or after the date of issuance. The County will be billed for non-Bond Counsel services in accordance with the Billing Policy set forth in Exhibit C to this resolution.

Section 3. Furnishing of Transcripts; Official Statements. The County shall furnish Bond Counsel with two complete certified transcripts of all proceedings had in connection with the issuance of the Bonds, Notes and other obligations in order to enable Bond Counsel to furnish its approving opinion on the validity thereof at the time of the sale and delivery of such Bonds, Notes and other obligations. The County also shall cause the purchaser of the Bonds, Notes and other obligations from the County to furnish to Bond Counsel before final printing and circulation thereof any proposed official statement, underwriting circular or bond prospectus for review of the accuracy of any statement relative to the services of Bond Counsel and to the description of the Bonds and Notes and laws relating thereto.

Section 4. Fees for Non-Bond Counsel Services. If the Prosecuting Attorney, Board of County Commissioners or County Treasurer shall request Bond Counsel to perform legal services relating to the issuance and sale of such Bonds, Notes and other obligations outside the scope of the Bond Counsel services described in Exhibit A, including but not limited to those services described in Exhibit B, the County shall compensate Foster Pepper PLLC at the hourly rates shown below for the participating individuals performing the work for such services actually performed, plus Bond Counsel's actual out-of-pocket expenses. The adjusted hourly rates for the primary team members are as follows:

Individual	Adjusted Hourly Rate
William Tonkin	\$455
Marc Greenough	\$405
Hugh Spitzer	\$435
Barbara League	\$360
Lindsay Coates	\$285
Legal Assistant	
Cindy Nevins	\$160

Upon extension of this contract for an additional one-year term, as described in Section 8 of this resolution, such hourly rates shall be increased to Bond Counsel's then prevailing hourly rates,

less a 10% discount; provided that the increase in the hourly rate of any individual attorney shall not exceed 10%.

Other conditions for the furnishing of such services may be arranged between Foster Pepper PLLC and the County. All arrangements for the performance of non-Bond Counsel legal services must be approved by County Administrator and Prosecuting Attorney and coordinated for billing purposes through County Treasurer's office. If as a part of such other legal services Bond Counsel agrees to perform a "due diligence" review of any official statement, offering circular, bond prospectus or other sales material, or continuing disclosure review, the furnishing of Bond Counsel's legal opinion provided for in Section 1 shall be conditioned on its satisfaction of the sufficiency of such statement, circular, prospectus or other material.

Section 5. General Terms of Engagement. Except as otherwise expressly provided in this resolution with respect to fees for services, expenses, billing policies and other matters, Bond Counsel's standard Terms of Engagement of Services (the "Terms of Engagement") attached hereto as Exhibit C and incorporated herein by this reference shall apply to all work performed by Bond Counsel under this resolution.

Section 6. Conflicts of Interest.

(a) Bond Counsel may serve as bond counsel to and otherwise advise and represent, from time to time, other public entities within the County's boundaries. However, unless expressly approved by the Prosecuting Attorney, Bond Counsel shall not represent such other entities in transactions with the County or in litigation in any court of law in which the County is an adverse party. The County consents generally to Bond Counsel's representation of other public entities subject to the conditions described in this paragraph (a).

(b) Bond Counsel has a substantial land use and real estate practice, and lawyers in that practice group of the Bond Counsel often represent owners and developers of property in land use matters throughout the State of Washington. The County consents to Bond Counsel's representation of owners and developers of property that is subject to the County's planning jurisdiction in connection with the planning of development projects, applying for and obtaining permits for those projects, and related activities. In particular, the County consents to and waives any conflict of interest arising from Bond Counsel's representation of such clients in contested proceedings, including administrative hearings and appeals. However, in no event during any time period when this resolution is in effect (except when expressly approved in advance and in writing by the Prosecuting Attorney) shall Bond Counsel represent another party in litigation in any court of law in which the County is an adverse party. After termination of this contract without a renewal or successor agreement with Bond Counsel, the County will not object to Bond Counsel's representing any party in litigation involving matters only unrelated to the services performed by Bond Counsel under this Agreement and in which the County is an adverse party.

(c) In accordance with the Terms of Engagement, Bond Counsel shall advise the County Prosecuting Attorney with regard to other potential conflicts as they may arise.

Section 7. Appointment as Special Deputy Prosecuting Attorney. The terms of this resolution shall be conditioned upon the Prosecuting Attorney's appointment of Foster Pepper PLLC or its responsible attorneys as Special Deputy Prosecuting Attorney.

Section 8. Term of Agreement; Extension. The terms of this resolution shall be effective from January 1, 2015, through December 31, 2018, and shall apply to any Bond, Note or other obligation issue, the sale of which has been specifically authorized, issued or closed during that

period. The services of Foster Pepper PLLC shall continue with respect to other Bond or Note issues for which that firm previously has been retained, employed or worked.

Unless terminated by either party, the contract represented by this resolution may be extended at the County's option for two additional one-year terms commencing January 1, 2019 and January 1, 2020, and effective until December 31, 2019 and December 31, 2020, respectively. The County, at its option and with Bond Counsel's concurrence, may extend the contract for additional terms of one-year each. All such extensions of the contract are subject to the approval of the presiding superior court judge of the County in accordance with RCW 36.32.200.

Section 9. Ratification of Prior Acts. Any actions previously taken of officers or employees of the County and consistent with the provisions of this resolution are ratified and confirmed.

ADOPTED by the Board of County Commissioners of Clark County, Washington, at a regular open public meeting, held this 16 day of Dec, 2014.

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, WASHINGTON


Chairman and Commissioner

Commissioner

Commissioner

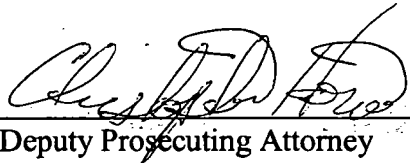
ATTEST:


Clerk of the Board

APPROVED AS TO SECTION 7 ONLY:

Clark County Prosecuting Attorney

APPROVED AS TO FORM:


Deputy Prosecuting Attorney


We accept employment as Bond Counsel in accordance with the provisions of the foregoing resolution.

FOSTER PEPPER PLLC

By _____
William G. Tonkin, Member

By _____
Jeffrey G. Frank
Chair, Executive Committee

The foregoing contract is approved this 3 day of December, 2014.



Presiding Judge of the Superior
Court of the State of Washington
in and for Clark County

EXHIBIT A

Scope of Bond Counsel Services

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 from financing to financing depending upon the nature and complexity of the financing. As used herein, the term "bonds" includes any obligation of the County for which we are asked to serve as Bond Counsel.

Those services which Foster Pepper PLLC will provide as Bond Counsel to the County include:

- (1) Advising the County and its consultants on the legal requirements applicable to, and, when requested, participating with those consultants and County staff in planning the project to be financed and the bond issue, including 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, to assure conformity of the bonds with applicable covenants and conditions and recommending springing provisions as appropriate;
- (3) Performing the necessary factual and legal analysis to assure, when intended, the exclusion from gross income for federal income tax purposes of the interest on the bonds, including preparing tax exemption and nonarbitrage certificates and calculating the yield of the bonds;
- (4) Drafting the resolutions, ordinances, notice of sale, arbitrage certificates and all other documents necessary to authorize the bonds to be sold and issued;
- (5) Attending meetings relating to the sale and issuance of the bonds at which our presence is requested by the County;
- (6) Forwarding needed documents to the bond rating agencies and credit enhancers;
- (7) Review any preliminary and final official statement, offering circular or other sales or disclosure material relating to the bonds prepared by the County's investment bankers and/or financial advisors to assure the documents' accuracy and completeness only of the description of the bonds, any continuing disclosure undertaking and the federal tax treatment of the interest on the bonds;
- (8) Preparing and assembling the transcript and closing documents necessary to support the issuance of the bonds and providing the Treasurer's Office with two copies of the transcript. Additionally the Treasurer's Office may want at least one copy in electronic form such as on a CD;
- (9) Reviewing bond insurance documents;

- (10) Furnishing a legal opinion approving the bonds;
- (11) Provide all other services normally performed by Bond Counsel; and
- (12) Review financing transactions that may include interest rate swaps and other similar transactions.

In all cases Bond Counsel will work closely with the County Prosecuting Attorney and/or officers and personnel of the County Treasurer's office and County Commissioners' offices, reviewing, at their request, any documents relating to the financing that they may provide and furnish them with the appropriate documents for sale and issuance of such bonds.

All services denoted above shall be coordinated through the Clark County Deputy Treasurer for billing purposes.

EXHIBIT B

Non-Bond Counsel Services

Traditional Bond Counsel services described in Exhibit A for which compensation could be made in accordance with a scale based upon a price per thousand dollars of bonds issued (e.g. \$2.00/\$1,000) shall not include the following additional bond and project-related work for the County. The following types of services may be requested from time to time and require working with the County Prosecuting Attorney, the County Treasurer, or others designated by the County.

(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 any official statement, offering circular or other sales material relating to the issuance of the bonds prepared by the County, its financial advisor or its underwriter or otherwise used in connection with such bonds, except the review of the official statement to assure accuracy in its description of the bonds, any continuing disclosure undertaking and the federal tax treatment of the interest on the bonds (See Exhibit A, item (7));

(3) Giving advice to the County's consultants regarding the applicability of the registration requirements under the Securities Act of 1933 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, Bond Counsel will review such agreements to assure that they contain only the traditional provisions and suggest changes to protect the County), reimbursement agreements or similar agreements related to the issuance of the bonds; attendance at rating agency or public information meetings in connection with the issuance of bonds;

(5) Preparation of supplemental opinions required of Bond Counsel by the County underwriter of County obligations in connection with their issuance;

(6) The drafting or obtaining of state or federal legislation; participation in administrative proceedings, trial or appellate litigation;

(7) Work in connection with seeking or obtaining governmental assistance or approvals from governmental agencies other than the County, necessary for the acquisition, construction, equipping, improving and financing of public buildings, facilities or utilities to be acquired by the County;

(8) Services relating to design or construction of such projects or contracts therefor;

(9) Negotiation and drafting of contracts or credit enhancement or liquidity facilities (other than bond insurance), including contracts with owners of property included within local improvement districts formed by the County, or disputes or litigation in connection therewith;

(10) Extensive post-issuance consultation regarding tax-exemption, disclosure or other matters;

(11) Provide consultation regarding questions not related to a specific bond issue; or

(12) Any other work as special counsel to the County not included in customary Bond Counsel services and described in Exhibit A.

Fees for non-bond counsel services will be on a time and material basis with hourly fees denoted for each attorney, paralegal, etc. attached hereto which will be an Addendum to any Professional Services Agreement.

All services denoted above shall be coordinated through the Clark County Deputy Treasurer for billing purposes.

EXHIBIT C



Terms for Engagement of Services

Thank you for choosing Foster Pepper PLLC. Our Engagement Letter and these “Terms” constitute our agreement with you for performing the engagement described in that letter. We pride ourselves on responsive and vigorous representation and strive to develop excellent working relationships with our clients. Therefore, we wish to share with you the terms of our engagement as your lawyers and tell you about our firm. Our web page (www.foster.com) contains additional information about the firm and its capabilities. If you have questions or concerns, please contact us immediately.

Scope of Work

Our policy—and the foundation of a sound client-attorney relationship—is to ensure that we understand your legal needs and that you understand the nature of the services we will provide. Communication between us is critical. We regularly will keep you informed of our activities on your behalf and will act in your interest at all times to the best of our abilities, subject to our knowledge of the facts and the state of the law during the representation.

Generally, one lawyer will be responsible for and will oversee your representation. Other lawyers and legal assistants may work on your behalf—especially when special skill or expertise is required or when delegation is more expeditious and cost-effective, or for other appropriate reasons. Your responsible lawyer will be your point of contact for all aspects of your representation. If at any time you are unhappy with any person working on your behalf, please tell your responsible lawyer or the Chair of the firm’s Executive Committee. The situation will be addressed immediately.

We need your help to represent you to the best of our abilities. We rely on you to be candid with and responsive to us, as we will be with you. Please inform us immediately of any change of circumstance affecting the representation or our ability to contact you. We both must respond promptly and completely to inquiries and requests to enable us to represent you effectively. While we cannot assure a successful result in any engagement, we pledge to use our best efforts on your behalf.

You may terminate our representation of you at any time and for any reason. In addition, we may choose to withdraw from the representation, but only in accordance with the applicable Rules of Professional Conduct in effect in the jurisdiction where our relationship exists. If we choose to withdraw as your lawyers, we will notify you in writing. At termination or withdrawal, you will remain obligated to pay us promptly for all charges for legal services rendered as well as charges resulting from the termination or withdrawal, including working with any successor counsel. We will cooperate with successor counsel to assure a smooth transfer of the representation.

Conflicts of Interest

Because our representation of you is limited in scope and because we have a large number of clients, we wish to clarify the extent to which our representation of you may affect our ability to represent other clients in other matters, including matters in which you may be involved. We employ internal procedures to ensure that our representation of other clients will not cause a conflict of interest with you. Your identity as our client is the person or entity named as the client in our Engagement Letter and does not include any of your affiliates, officers, directors, principals or other related parties unless so specified. Accordingly, we may represent another client with interests adverse to any such affiliate without obtaining your consent, and we respectfully decline to be bound by any contrary policy. If we discover any actual or potential conflict of interest affecting our representation of you, we will notify you promptly.

Depending upon our relationship, at the conclusion of the engagement described in the Engagement Letter, you will no longer be considered a current client of the firm. As a former client, you may expect that we will not represent another person in the same or a substantially related matter if that client's interests are adverse to your interests unless you have consented in writing to the representation after consultation and full disclosure of material facts. You may also expect that we will preserve appropriately the confidentiality of your information and secrets. Without your prior written consent, we will not represent a client adverse to you in a different matter if we have obtained confidences or secrets from you that are material to that matter.

Records Retention

We maintain policies regarding retention and destruction of records. Records include our files and related electronic documentation, including e-mails. Records (including materials provided by you to us and all electronic documentation) relating to this engagement will be destroyed according to our policies unless you request that they be returned to you. Our own files pertaining to the matter will be retained in accordance with the policies. Our own files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. We retain client files for ten years after a matter is closed. We will endeavor to remind you of this policy on completion of the engagement, but we reserve the right to destroy records in accordance with our policy without further notice to you.

Fees for Services

We generally charge on an hourly basis for time expended on your behalf. This includes, for example, telephone conversations, face-to-face conferences, strategy development and planning, document preparation and review, research, drafting, negotiating, court appearances and travel. Through hourly billing, you pay only for work performed on your behalf. We maintain daily time records that include a brief description of the work done so that you will understand why you are being billed. We record our time in units of tenths of an hour.

Upon request, we will work with you to produce an estimate of the anticipated legal fees and costs for a particular engagement. Any such estimate will be based on our prior experience with similar engagements as well as information you provide us about your particular needs. Unless we reach a clear, written understanding that the fee will be a fixed amount, any estimate we make may be revised based upon the facts and circumstances we encounter during your representation.

Our rates (which are subject to change prospectively with notice) should always be discussed in advance with your responsible attorney. Generally, rates are revised annually and adjustments will be reflected in our invoices in the month following any adjustment. On occasion, and after discussion with you, we may perform services on a non-hourly basis. Our agreement with you to do so will be in writing. We strive to keep fees and charges at a level appropriate to the task.

Expenses

In addition to fees for legal services, you will be charged for expenses advanced on your behalf and ancillary costs incurred by us during the course of your representation. Such charges may be revised from time to time without notice and will be reflected in our invoice in the month following any revision. These charges include such things as photocopying, document binding, external messenger service, electronic records searches, special mailing or courier services, and costs associated with managing electronically stored information [e.g., scanning, image processing, data collection, database services, web hosting, document summaries, etc.]. We may add an administrative charge to some or all of these costs. The firm's Automated Legal Support Services team may perform some of the services associated with managing electronically stored information. Charges for these services are part of the costs you agree to pay in connection with our representation of you. You will not be billed for long distance telephone charges, facsimile transmissions or standard postage charges. Please note that should your work require secretarial overtime (not caused by a secretary working for another client during the regular work day), you will be charged for such service.

You may be asked to pay certain non-routine expenses directly to the service provider. These may include travel expenses, filing fees, and fees and expenses of independent professionals such as appraisers, accountants, investigators, court reporters, and other consultants and experts. Often, these expenses must be paid in advance. Normally, we will send the charge directly to you for payment or obtain in advance funds from you to pay such costs. While we are under no obligation to do so, we may advance payment of such expenses and subsequently bill you for the charges.

Billing Policy

Usually, you will be billed monthly. For your convenience, the billing statement will describe briefly the matter and legal services performed and will set forth the fees and expenses relating to the legal services provided. The bill typically will contain charges incurred during the prior month. Charges for some expense items such as copy and delivery charges may not be processed and billed until some time after the expense has been incurred. Bills are due upon receipt, and may be paid by check, wire transfer, Visa, MasterCard or American Express. Any past due amounts will bear interest at twelve percent per year. We strive to provide clear and prompt billing statements. If you have any questions regarding your invoice, please promptly call your responsible attorney or our accounting department.

Advance Fee and Trust Deposits

If required by your Engagement Letter, you must pay in advance an amount equal to our estimate of the fees and costs for some or all of the work contemplated by the scope of the engagement. Any amount remaining at the conclusion of the engagement will be returned to you. If, after commencing work, it appears the advance payment will be insufficient to cover legal fees and costs, you may be asked to advance additional amounts.

If required by your Engagement Letter, you must pay a retainer to secure our availability for a given period of time, which is considered earned by us when paid.

Amounts you pay to us in trust, including advance payments for fees and costs, will be deposited in a trust account that we maintain for the benefit of our clients as required by the Rules of Professional Conduct. Under these rules, if your deposit is not expected to earn a "positive net return" given its size, the expected duration of the deposit and prevailing interest rates (less reasonable bank and administrative charges), we will place the deposit into a pooled account. The interest earned on this account must be paid to a charitable foundation established by court rule. If your deposit likely will earn a "positive net return", you may request that it be placed into a segregated account and interest earned on that account will be added to your deposit and will be reported by our bank to the Internal Revenue Service as taxable income to you. If you wish us to place such funds into a segregated account for your benefit, you must provide us with your Federal Tax Identification Number.

Attorney-Client Privilege

Our attorneys and staff recognize our duty to maintain confidentiality. The attorney-client privilege protects communications between us, whether oral or written, as long as neither of us discloses those communications to anyone else. Privileged communications cannot be used in court without your consent. Therefore, to preserve the privilege and confidentiality of our communications, you should not show our written communications or discuss any oral communications between us with anyone. Furthermore, certain communications and documents prepared in anticipation of litigation are also privileged even if no attorney is involved. Because disputes can arise as to whether certain communications are privileged, if you have any questions regarding what you can do, be sure to seek advice from the lawyer with whom you are working.

We are not acting as your counsel with respect to the provisions of this statement of Terms for Engagement of Services and to do so would be a conflict of interest. If you wish to seek advice from independent counsel of your choice about whether you should agree to these terms, please do so. In addition, if you have any questions or would like additional information, we are happy to discuss this statement with you further. These terms of engagement will govern our relationship, however, unless we reach a different agreement in writing.

We understand that you have selected us not only for our expertise, but also for our reputation as responsive and creative counsel. Be assured that we will strive to live up to your expectations. If you have any questions, please do not hesitate to call.

Seattle: Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101-3299
Phone: (206) 447-4400 or (800) 995-5902
Facsimile: (206) 447-9700 or 9283

Spokane: Foster Pepper PLLC
US Bank Bldg.
422 West Riverside Avenue, Suite 1310
Spokane, Washington 99201-0302
Phone: (509) 777-1600
Facsimile: (509) 777-1616

Revised: 01/08/13