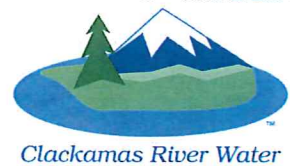


CLACKAMAS RIVER WATER
BOARD OF COMMISSIONERS
SPECIAL MEETING & EXECUTIVE SESSION
December 22, 2016
AGENDA
6:00 pm



Special Meeting @ 6:00pm

Call to Order, Pledge of Allegiance and Roll Call – *Naomi Angier, Board President*

1. **Approval of Legal Services Contract with Harrang Long Gary Rudnick - *Todd Heidgerken, General Manager***
2. **General Manager's Update - *Todd Heidgerken, General Manager***

Adjourn Special Meeting

EXECUTIVE SESSION begins immediately follow the Special Meeting

1. Discuss information or records that are exempt by law from public inspection pursuant to ORS 192.660 (2) (f) and 192.502 (9)
2. Consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed pursuant to ORS 192.660 (2) (h)

CLACKAMAS RIVER WATER

SPECIAL BOARD MEETING

December 22, 2016

SUBJECT Approval of Legal Services Contract

DRAFT MOTION	I move that the Board approve the professional services agreement with Harrang Long Gary Rudnick for legal services for Clackamas River Water and authorize the General Manger to sign on behalf of the Clackamas River Water Board of Commissioners
EFFECTIVE DATE	January 1, 2017

PRINCIPAL STAFF PERSON Todd Heidgerken, General Manager

BOARD ACTION REQUESTED Approval of the professional services agreement for legal services.

DOCUMENTS ATTACHED Professional Services Agreement between Clackamas River Water and Harrang Long Gary Rudnick for legal services

Agenda Summary

BACKGROUND In accordance with Board Policy, the CRW Board is responsible for the hiring of legal counsel for the agency. Dean Phillips of Phillips Law, who is the current CRW legal counsel, gave notice that he is retiring at the end of 2016. The General Manager with direction from the Board established a timeline and process for the selection of legal counsel. From this process, Harrang Long Gary Rudnick was identified as the highest-ranking firm. The Board adopted Resolution 04-2017 authorizing the General Manager to negotiate a professional services agreement with Harrang Long Gary Rudnick to provide legal services to CRW. Once negotiated the agreement is to be presented to the CRW Board for their consideration.

ANALYSIS Attached is the negotiated agreement with Harrang Long Gary Rudnick establishing Bob Steringer as the General Counsel for CRW effective on January 1, 2017. The agreement provides the terms and conditions for the arrangement with CRW. Work under this agreement is conducted as a part of a monthly fixed fee of \$4000. It is estimated that the services associated with the fixed fee would require 14-16 hours per month. The activities covered under this fixed fee are outlined in Section 2.1 of the agreement.

Section 2.2 outlines those services outside of the fixed fee that would be charged at a blended rate of \$275 per hour. These fees are in place for calendar year 2017. Any services not identified in Sections 2.1 or 2.2 are to be billed at the standard hourly rates minus a discount of 10%. All subcontracted or legal expenses involving special counsel engaged outside the firm will be paid on the terms of the engagement as approved by the General Manager.

The term of the agreement is for three years and the compensation shall be reviewed annually. The agreement may be terminated at any time with 30 days' notice by either party.

Harrang Long Gary Rudnick also has a labor and employment law practice. The agreement allows for those services to be added to the agreement by amendment if CRW so chooses.

CLACKAMAS RIVER WATER
PROFESSIONAL SERVICES AGREEMENT FOR
LEGAL SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective January 1, 2017 by and between Clackamas River Water ("District") and Harrang Long Gary Rudnick, P.C. ("Firm"), with offices in Portland, Salem and Eugene, Oregon.

RECITALS

The District requires general counsel and other legal services involving the particular training, ability, knowledge and experience possessed by the Firm that will aid the District, which legal services include providing legal advice and possible litigation services or oversight of litigation on general corporate government, real estate, water rights and water issues (the "Services"). Such Services are being contracted with counsel in the role as General Counsel for the District. The District and the Firm intend to have further discussions regarding legal services for labor and employment matters, and will amend this Agreement in the event the scope of this Agreement is expanded to include such services.

The District desires to have the General Counsel bill and be paid on a monthly fixed fee, which fixed fee is intended to cover all general counsel services except for particular matters identified in this Agreement as being outside the fixed fee. Such an agreement will provide the District with an assurance of continued services at the level necessary to support the District's activities yet provide some level of consistency of billing to the District for budget purposes.

The parties agree that the Firm shall perform or oversee the Services subject to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

1. **PERFORMANCE OF SERVICES.** The Firm shall use its best efforts to perform the required Services including providing such advice, recommendations, information and other legal consulting services as may be required by the District, subject to the following:

- 1.1 The standard of care applicable to the Firm's services will be the degree of skill and diligence normally exercised by attorneys performing the same or similar services at the time the services are performed in the Portland metropolitan statistical area. The Firm shall re-perform any services not meeting this standard without additional compensation.

1.2 The District is entering into this Agreement with the Firm on the understanding that C. Robert Steringer will be the primary attorney and have supervisory and primary responsibility for all District legal matters under this Agreement (the "Attorney"). As such, the Attorney shall be the primary contact with the District's General Manager under this Agreement. In the event the Attorney leaves the Firm for any reason, the Firm shall notify the District as soon as the Firm has notice of such circumstance and the District shall have the right to immediately terminate this Agreement and transition to other counsel.

1.3 In the event that the Firm in cooperation with District's General Manager determines that additional or specialized advice is necessary with respect to any matter, the General Manager and the Firm will advise the District Board with respect to assignment of such matters to other counsel and the applicable rate or fee to be charged for such contracted or subcontracted services. Such additional counsel will be placed under subcontract with the Firm. All such work under subcontract shall be supervised by the Firm. The subconsultant's services shall be billed through the Firm's office and added to the Firm's billing to the District, which processing shall be included within the retainer fee established by this Agreement. Nothing stated herein shall be construed to prohibit the District Board from authorizing direct contracts with other legal counsel, provided that in such event the Firm shall have no responsibility to supervise work provided under such direct contracts or to bill for such contracts.

2. **WORK ASSIGNMENTS.** With respect to General Counsel service assignments, the General Manager shall advise the District Board on any matters that are identified to be outside the scope of work covered by the monthly fixed fee stated in this Agreement, including any subcontracted work discussed under subparagraph 1.3 above. As part of the General Counsel Services, the Attorney shall be listed as the District's registered agent with the Secretary of State's office. In the event the legal matter involves a personnel matter in which the General Manager has a personal conflict of interest or such matter is likely to exceed the General Manager's contracting authority established by the District Board, the General Manager will coordinate with a member of the District Board to authorize such legal or subcontracted services. Otherwise, the General Manager shall have the authority to refer a legal matter to the Firm, unless such services exceed the General Manager's contracting authority. Each scope of Services authorized by the General Manager shall be treated as a separate contract for determining whether the services are within the General Manager's contracting authority and such services shall be handled as task orders as discussed below.

2.1 The following assumptions shall be applicable to the work assignments and monthly fixed fee billed under this Agreement:

- The monthly fixed retainer will cover the following General Counsel legal services:
 1. Billing and other tasks related to administration of this Agreement
 2. Responses to audit letters
 3. Review of Board meeting agenda/packet, and identification of legal issues in same
 4. Service as CRW's registered agent
 5. Advice on public contracting/procurement questions/LCRBs, including without limitation construction contracting questions*
 6. Advice on compliance with Open Meetings Law*
 7. Advice on compliance with Public Records Law*
 8. Advice on real property issues*
 9. Advice on interpretation and compliance with existing intergovernmental agreements*
 10. Advice on interpretation and compliance with Board/District policies*
 11. Advice on impact of state legislation
 12. Every initial phone call on a new legal matter, regardless of whether the task ultimately falls within the monthly fixed retainer

For each item noted with an asterisk (*), a specific task will fall within the monthly fixed retainer if: (a) the specific task requires less than one (1) hour of a Firm attorney's time; or (b) to the extent that the Firm's attorneys have not billed a total of fifteen (15) hours to the monthly fixed retainer in that calendar month.

- The Firm will not be required to attend more than three (3) staff or third party meetings outside of the Firm's law office per month. These meetings do not include telephone conferences which are included in the scope of the fixed fee.
- Attendance of counsel at District regular, special or executive session Board meetings is not included in the fixed fee.
- Any legal services falling in the excluded matters listed in subparagraph 2.2 below will not be included in the monthly fixed fee.
- It is assumed that the services included in the fixed fee will require 14-16 hours of Firm attorney time per month. The fixed amount retainer will be reviewed initially as soon as possible after July 1, 2017, and thereafter once annually to determine whether any clarification is merited in the definition of services to be included in the fixed fee.

2.2 Services not included in the fixed fee pursuant to Section 2.1 of this Agreement shall be excluded from the monthly fixed fee and the Firm shall have the right to bill an additional charge at the applicable hourly rate established under this Agreement or as modified as provided by this Agreement by subsequent modification:

- The Firm will charge a blended rate of \$275 per hour for services in the following areas that are not included within the monthly fixed fee:
 1. Tasks in the categories identified by an asterisk in Section 2.1, above, but which fall outside the monthly fixed fee because their complexity requires more than one (1) hour of a Firm lawyer's time
 2. Planning and negotiating new intergovernmental agreements or amendments to current intergovernmental agreements
 3. Real property transactions and construction
 4. Coordination of litigation covered by Special District Insurance Services
 5. Coordination of outside counsel
 6. Water rights

This blended hourly rate will be applicable for 2017. Effective January 1, 2018, the Firm shall have the right to adjust its hourly rate once each year by providing the District with prior written notice of such adjustment and the amount of the adjustment, which notice shall be given to the District not less than sixty (60) days prior to the anniversary date of this Agreement.

- The Firm will charge its standard hourly rates, minus a discount of ten percent (10%), for any matters not identified in Section 2.1 or the preceding bullet point for matters covered by the blended rate. This will include any matter relating to current or future litigation, arbitration, mediation or administrative complaint or proceeding (whether filed by third parties or by Board members against one another or against the agency). The parties understand that counsel for the defense of such matters may be covered by applicable insurance, but this exclusion covers the Firm's coordination responsibilities relating to such litigation or claims.
- For all matters not included within the monthly fixed fee, the Firm will bill CRW for paralegal work at \$160/hour. The firm does not charge for paralegal time on administrative or clerical matters that can be handled by a legal assistant.
- All subcontracted or legal expenses and fees involving special counsel engaged outside the Firm will be paid on the terms of the engagement with such subcontractor as approved by the General Manager.

- CRW will pay any out-of-pocket expenses necessitated for matters assigned to General Counsel (such as filing or investigative fees). The Firm will continue the practice of not billing for general postage; copying or secretarial work associated with District matters provided those items relate to matters or issues covered by the monthly fixed amount retainer.
- CRW will pay the Firm \$150 per hour for C. Robert Steringer's participation in orientation sessions with CRW's retiring General Counsel, Dean Phillips.

2.3 Task Orders. For any requested legal services outside the monthly fixed fee, the General Manager shall provide information to the Firm relating to the nature of the requested services and the expected time for such services in the form of a task order. For each such task order, the Firm shall prepare a response indicating whether the requested services will be performed by Firm counsel or special counsel and the budget for such services.

3. **EFFECTIVE DATE AND DURATION OF THIS AGREEMENT.** The effective date of this Agreement shall be January 1, 2017 and the duration shall continue until December 31, 2019, provided that the compensation shall be reviewed periodically as provided in this Agreement.
4. **COMPENSATION.** The District agrees to pay the Firm compensation for the Services at the fixed rate amount of \$4,000 per month, plus compensation for services excluded from the fixed fee as provided in this Agreement which services shall be billed and paid at the applicable hourly rate set forth in this Agreement. Materials and out-of-pocket expenses shall be billed at the Firm's actual costs without any overhead, except for materials included in the fixed amount retainer as provided above. Payment terms are net 30 days after billing. The form of invoice shall be as agreed between the Firm and the General Manager.
5. **CHANGES.** Neither this Agreement nor any provision of this Agreement shall be waived, altered, modified, supplemented, extended or amended, in any manner whatsoever, except by written instrument, executed by authorized representatives of both parties.
6. **DISTRICT FURNISHED DATA AND INFORMATION.** The District shall provide to the Firm, without charge, such data and information as may be requested by the Firm necessary for the performance of the Services. However, nothing herein stated shall relieve the Firm from making such independent review and verification of the information provided as is necessary to meet the Firm's standard of care as set forth in Paragraph 1.1 above.

7. **PROMPT NOTICE.** The District shall give prompt notice to the Firm whenever the District observes or becomes aware of any development that affects the scope or timing of the Firm's services or of any performance that does not meet the standard specified in this Agreement. The Firm shall give prompt written notice to the General Manager if, at any time during the performance of this Agreement, the Firm becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by the District. Any delay or failure on the part of the District to provide a written response to the Firm shall constitute neither agreement with nor acquiescence in the Firm's statement or claim and shall not constitute a waiver of any of the District's rights.
8. **INDEPENDENT CONTRACTOR STATUS.** The Firm shall be free from direction and control over the means and manner of providing the Services, subject only to the requests by the District for the desired result, provided that such requests shall not imply a guaranteed result by the Firm. The Firm is responsible for obtaining all assumed business registrations or professional occupational licenses required by state or local law. The Firm shall furnish the tools or equipment necessary to perform the Services. The Firm certifies that the Firm is an independent contractor and will be responsible for any federal, state or local taxes applicable to payments made by the District.
9. **SUBCONTRACTORS; ASSIGNMENT; SUCCESSORS-IN-INTEREST.** The parties acknowledge this is a personal services contract and the District is relying on the specific experience and knowledge of the Firm and particularly its primary attorney assigned to the District. Except as specifically authorized in this Agreement, neither the District nor the Firm shall assign, enter into any subcontract or transfer any interest in this Agreement to any third person, without first obtaining the express written consent of the other party.
10. **NO THIRD PARTY BENEFICIARIES.** The District and the Firm are the only parties to this Agreement and are the only parties entitled to enforce its terms.
11. **COMPLIANCE WITH APPLICABLE LAW.** The Firm shall comply with all federal, state and local laws and ordinances applicable to the Services. All applicable statutory provisions required to be incorporated in public contracts for professional services under ORS 279A and 279B are incorporated herein by this reference as if fully stated verbatim herein.
12. **INSURANCE.** The Firm shall provide to the District certificates of insurance prior to the beginning of the Services under this Agreement and shall maintain in full force and effect for the term of this Agreement, at the Firm's expense, the following insurance:

12.1 Automobile Liability Insurance. The Firm agrees to maintain automobile liability insurance covering bodily injury, including death, and property damage in the amount of not less than \$500,000 combined single limit. Automobile insurance shall include coverage for owned, hired or non-owned vehicles, as applicable, for the protection of the Firm and his agents and employees arising from the Firm's negligence.

12.2 Professional Liability Insurance. The Firm shall obtain and maintain the Oregon State Bar's required professional liability insurance administered by the Professional Liability Fund (PLF) for errors and omissions with mandatory limits set forth by the PLF.

12.3 Worker's Compensation Insurance. The Firm shall obtain and maintain worker's compensation insurance as an insured employer for purposes of the Oregon Worker's Compensation law (ORS Chapter 656) and is solely liable for any workers' compensation coverage applicable to the Firm's employees performing services under this Agreement.

The Firm shall provide not less than 30 days prior written notice to the District of cancellation or any material change in the insurance policies or insurance coverages required to be provided by the Firm by this Section 12.

13. **INDEMNIFICATION.** [Intentionally Omitted.]
14. **CONFIDENTIALITY.** No reports, information and data given to or prepared or assembled by the Firm or the Firm's sub-consultants under this Agreement shall be made available to any individual or organization by the Firm without the prior written approval of the District.
15. **RECORD KEEPING.** The Firm shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles for a minimum of three (3) years after expiration or termination of this Agreement, except as required longer by law.
16. **FOREIGN CONTRACTOR.** If the Firm is not domiciled in or registered to do business in the State of Oregon, the Firm shall promptly provide to the Oregon Department of Revenue and the Oregon Corporation Division all information required by those agencies relative to this Agreement. The Firm shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Agreement.
17. **GOVERNING LAW; JURISDICTION; VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. This venue shall lie in the circuit Court of the State of Oregon for the County of Clackamas.

18. **OWNERSHIP OR WORK PRODUCT; LICENSE.** [Intentionally Omitted].
19. **ERRORS.** [Intentionally Omitted].
20. **SUSPENSION, DELAY, OR INTERRUPTION OF WORK.** The District may suspend, delay, or interrupt all or part of the Services being performed by the Firm for the District's convenience. In the event of suspension, delay or interruption of Services, the District shall compensate the Firm per the agreed upon hourly rate of compensation for Services satisfactorily performed to the date of the suspension, delay or interruption of the Services.
21. **BREACH OF CONTRACT.**
- 21.1 The Firm shall remedy any breach of this Agreement within the shortest reasonable time after the Firm first has actual notice of the breach or the District notifies the Firm of the breach, whichever is earlier. If the Firm fails to remedy a breach in accordance with this paragraph, the District may terminate this Agreement or that part of the Agreement affected by the breach upon written notice to the Firm and obtain substitute services in a reasonable manner and may recover from the Firm the amount by which the cost of those substituted services exceed the cost to the District for the services under this Agreement.
- 21.2 If the breach is material and the Firm fails to remedy the breach in accordance with this paragraph, the District may declare the Firm in default and pursue any remedy available for a default.
- 21.3 Pending a decision to terminate all or part of this contract, the District unilaterally may order the Firm to suspend all or part of the Services under this Agreement. If the District terminates all or part of this Agreement pursuant to this paragraph, the Firm shall be entitled to compensation only for Services rendered prior to the date of termination, but not for Services rendered after the District ordered the suspension unless such Services was required to preserve the District's rights under the law.
- 21.4 To recover amounts due under this Section, the District may withhold from payment any amounts owed by the District to the Firm, including but not limited to amounts owed under this or any other contract between the Firm and the District.

22. **TERMINATION.** This Agreement may be terminated at any time by mutual consent of both parties, or by either party upon thirty (30) days' written notice, delivered by certified mail at the address listed below in this Agreement, or by facsimile at the facsimile number listed below, or by messenger delivery:

Clackamas River Water
Att: General Manager
16770 SE 82nd Dr., Suite 100
Clackamas, OR 97015
(503) 656-7086 (Fax)

Harrang Long Gary
Rudnick, P.C.
Att: President
360 E. 10th Ave., Suite 300
Eugene, OR 97401-3273
(503) 241-1458 (Fax)

23. **ATTORNEY FEES.** If a suit or action is filed to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney fees.
24. **SEVERABILITY.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
25. **FORCE MAJEURE.** Neither the District nor the Firm shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, the District's or the Firm's reasonable control. The parties shall, however, make all reasonable efforts to remove or eliminate such a cause of delay and shall, upon the cessation of the cause, diligently pursue performance of its respective obligations under this Agreement.
26. **WAIVER.** The failure of the District or the Firm to enforce any provision of this Agreement shall not constitute a waiver by the District or the Firm of that or any other provision.
27. **MERGER.** This Agreement constitutes the entire agreement between the parties.
28. **MEDIATION.** Should any dispute arise between the parties to this Agreement it is agreed that such dispute will be submitted to the Oregon State Bar's disputed fee resolution process.

29. **BINDING ON SUCCESSORS AND ASSIGNS.** Each party binds itself, and any partner, successor, personal representative or permitted assignee to the terms and conditions of this Agreement. Nothing stated herein shall be construed to grant permission for any assignment and such assignments and transfers shall be governed by Section 9 of this Agreement. Any assignment, transfer or subcontract attempted in violation of Section 9 shall be void.

30. **NOTICE AND CONTACT INFORMATION.** For purposes of notices and communications under this Agreement, the District's Project Manager is:

Todd Heidgerken, General Manager
Clackamas River Water
16770 SE 82nd Dr., Suite 100
Clackamas, OR 97015
(503) 722-9250 – Phone
(503) 656-7086 - Fax
THeidgerken@crwater.com - Email

And for the Firm, the contact information is:

C. Robert Steringer, Esq.
Harrang Long Gary Rudnick, P.C.
1001 S.W. Fifth Ave., 16th Floor
Portland, OR 97204
(503) 242-0000 – Phone
(503) 241-1458 – Fax
bob.steringer@harrang.com -Email

IN WITNESS HEREOF, the parties have executed this Agreement effective the day and year first written above.

CLACKAMAS RIVER WATER

HARRANG LONG GARY
RUDNICK, P.C.

By: _____
Todd Heidgerken, General Manager
on behalf of CRW Board of
Commissioners

By _____
C. Robert Steringer, President

Date: _____

Date: _____