

PUBLIC WORKS DEPARTMENT MEMORANDUM
#34-2020

DATE: November 23, 2020

TO: Honorable Mayor Meredith Leighty and City Council Members

THROUGH: Heather Geyer, City Manager *hmg*

FROM: Kent Kisselman, PE – Director of Public Works *KHK*

SUBJECT: CR-158 – 2021 Water Rights Special Counsel

PURPOSE

To consider CR-158, a resolution to approve an annual contract with Fischer, Brown, Bartlett and Gunn, PC (FBBG) to serve as special water counsel.

BACKGROUND

The City has utilized FBBG as special water counsel since 1985. FBBG retains an extensive record of the City's legal history related to the water rights owned by the City. FBBG has a thorough understanding of the City's water system and water rights, and has worked effectively on legal issues pertaining to the City's water rights. FBBG's knowledge of the City's water supply allows them to protect our critical water supply assets.

Currently, FBBG is assisting the City with the water court process for the change of use of Farmers Reservoir and Irrigation Company (FRICO) shares that have been purchased by the City. They are also assisting the City in the water court application for and development of the augmentation plan for Croke Reservoir and Standley Lake excess storage. Additionally, FBBG provides legal support in other matters relating to the City's water rights.

Utilization of FBBG since 2010 includes:

2010	\$81,802
2011	\$209,847.22
2012	\$73,552
2013	\$93,164.23
2014	\$230,688.20
2015	\$122,868.15
2016	\$197,355.47
2017	\$114,779.31
2018	\$105,962.29
2019	\$113,775.38
2020 (to date)	\$35,560.72

STAFF RECOMMENDATION

Attached is CR-158, a resolution that, if approved, would authorize the Mayor to execute a contract between the FBBG to provide legal services in an amount not to exceed \$200,000. Staff recommends approval of CR-158.

BUDGET/TIME IMPLICATIONS

The cost to provide legal services for 2021 is estimated at \$200,000. Funding is available in the Water Fund.

STAFF REFERENCE

If Council members have any questions they may contact Director of Public Works Kent Kisselman at 303.450.4005 or kkisselman@northglenn.org.

CR-158 – 2021 Water Rights Special Counsel
2021 Water Rights Special Counsel – Legal Services Agreement

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-158
Series of 2020

Series of 2020

A RESOLUTION APPROVING THE LEGAL SERVICES AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND FISCHER, BROWN, BARTLETT & GUNN, P.C.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Legal Services Agreement, attached hereto, between the City of Northglenn and Fischer, Brown, Bartlett, & Gunn, P.C., in an amount not to exceed \$200,000.00 is hereby approved and the Mayor is authorized to enter into the Agreement on behalf of the City Council of the City of Northglenn.

DATED at Northglenn, Colorado, this ____ day of _____, 2020.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

LEGAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2020, to be effective as of January 1, 2021, by and between the CITY OF NORTHGLENN, COLORADO, whose address is 11701 Community Center Drive, Northglenn, Colorado 80233 ("City") and FISCHER, BROWN, BARTLETT & GUNN, P.C., a professional corporation, whose address is 1319 E. Prospect Road, Fort Collins, CO 80525 ("FBBG").

In consideration of the mutual covenants and obligations herein expressed, the City and FBBG agree as follows.

1. **Scope of Services.** FBBG agrees to provide legal services to the City upon the request of authorized representatives of the City, including the City Attorney. FBBG is customarily engaged in the profession of providing legal services to clients. FBBG shall not be obligated to work exclusively for the City during the term of this Agreement. However, FBBG will provide adequate professional time for the performance of legal services requested by the City hereunder. FBBG is responsible for providing its own offices, equipment, training and supplies for performance of the legal services.

2. **Time of Commencement and Completion of Services.** The legal services shall be provided during the year commencing on January 1, 2021, and ending on December 31, 2021.

3. **FBBG Responsibility.** FBBG shall be responsible for the performance and supervision of all legal services requested by the City to be performed under this Agreement. In addition, FBBG shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all legal services performed under this Agreement. FBBG shall only employ qualified persons for performance of the legal services.

4. **Compensation.** In consideration of the services to be performed pursuant to this Agreement, the City agrees to pay FBBG reasonable fees for services rendered by FBBG attorneys and legal assistants for legal services performed. Reasonable attorney fees billed by FBBG shall be determined in accordance with the factors to be considered in determining a lawyer's reasonable fee, as set forth in Rule 1.5 of the Colorado Rules of Professional Responsibility adopted by the Colorado Supreme Court. It provides:

Factors to be considered in determining the reasonableness of the fee include the following:

- (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude the employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The time involved and the results obtained;
- (5) The time limitation imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;

- (7) The experience, reputation and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent.

A \$125.00 per hour charge will be made for secretarial, clerical and word processing services provided by firm personnel.

Due to various uncertainties, it is difficult to predict the nature, scope and extent of legal services required, and thus the anticipated fees for such services. The City and FBBG anticipate that legal fees paid to FBBG pursuant to this Agreement shall not exceed two hundred thousand dollars and no/100 dollars (\$200,000.00), although each recognize that such fees may actually be below or above that amount.

The invoices from FBBG shall include, at a minimum: A list of FBBG's personnel who worked on legal matters for the City during the billing period, the amount of time each worked, the reimbursable advances or disbursements incurred by us (mileage at I.R.S. rate, court filing charges, recording fees, etc.) and a flat fee charge of 2% for reimbursable expenses (black/white and color photocopies, postage, long distance calls, faxes, Westlaw research, etc.).

A representative of FBBG and the Northglenn City Manager (or his designee) shall meet as needed to review significant matters in which FBBG is or will be engaged for Northglenn. Prior to meeting, as to the ongoing or future significant matter, FBBG may coordinate with Northglenn's staff and shall prepare: (1) a timeline of activities or tasks to be undertaken by FBBG, and (2) a forecasted budget. At the meeting between the City Manager or his designee and the representative of FBBG, the timeline and budget shall be reviewed and discussed. As appropriate, necessary, or desirable the City Manager, in coordination with the representative of FBBG and Northglenn staff, may modify the tasks FBBG is to undertake and correspondingly the budget for such tasks. It is recognized that: (1) at best the timeline and budget are estimates and forecasts of the nature and extent of the legal services which may be necessary for the significant matter and applicable fees, and (2) that both will be mutually modified as the matter progresses. The intent of the task summary and budget, however, is to provide the City with a reasonable estimate of the tasks then anticipated and a forecast of the potential associated fees and to ensure that the City is aware of major activities or matters undertaken or to be undertaken by FBBG and the potential associated fees.

5. Payment and Review.

A. Bills will be paid monthly; provided, however, that the City shall have the right to refuse to pay all or a portion of a billing statement in order to first verify the accuracy of the statement or resolve a dispute with FBBG regarding a statement.

B. FBBG representatives will meet with the City's representatives from time to time at the City's request to review the legal services performed and billings hereunder.

6. Drawings and Other Documents. FBBG shall provide the City with reproducible copies of all documents specially developed for the City in the performance of the legal services hereunder.

7. Parties' Representatives. Each party designates the Representatives listed below who shall have the authority to make all necessary and proper decisions with reference to the legal

Revised 11/6/18

services. All requests for Agreement interpretations, changes, and other clarifications or instructions shall be directed to the Parties' Representatives. Unless otherwise designated in writing, the City's Representatives will be Heather Geyer, Kent Kisselman, Tamara Moon-Carlson or Corey Hoffmann and FBBG's Representatives will be ~~William H. Brown~~, Donald E. Frick, Daniel K. Brown or Brent Bartlett.

8. **Key Personnel.** FBBG shall assign the following employees of FBBG to performance of legal services for the City for so long as the parties deem necessary, so long as they are employed by or associated with FBBG: ~~William H. Brown~~, Daniel K. Brown, Brent Bartlett, Sara Irby, and Donald E. Frick.

9. **Insurance.** FBBG shall maintain the following insurance in full force and effect during the full term of this Agreement:

A. Workmen's Compensation Insurance in amounts prescribed by applicable statutes; and

B. Professional Liability Insurance in the amount of \$1,000,000 per claim and in the aggregate.

10. **Confidentiality.** All information which FBBG or any person, firm or corporation employed by or otherwise connected with FBBG, receives from the City, the City's employees, any other contractor or subcontractor of the City or employees of any such other contractors or subcontractors under or pursuant to this Agreement, shall be considered confidential and maintained as a privileged attorney-client communication or trade secret and FBBG shall neither use such information, except pursuant to and in accordance with the terms and conditions of this Agreement, nor disclose such information to any third party without the prior consent of the City.

11. **Independent Contractor.** Nothing herein shall be construed to make FBBG an agent or employee of the City for any purpose. FBBG shall in all respects be an independent contractor of the City in its performance of the legal services, and FBBG and its employees and subcontractors shall in no way represent themselves to third parties as employees of the City in the performance of the legal services for any purpose.

12. **No Unemployment Insurance Benefits For FBBG.** FBBG is not entitled to unemployment insurance benefits as a result of performance of legal services for the City unless unemployment compensation coverage is provided by FBBG or some other entity.

13. **Payment of Taxes.** FBBG is and shall be solely liable and responsible for any federal and state income and withholding taxes, unemployment taxes, FICA taxes and worker's compensation payments and premiums applicable to this agreement or any services provided hereunder.

14. **Termination.** Both the City and FBBG shall have the right to terminate this Agreement for any reason upon the giving of notice to the other party.

15. **Force Majeure.** Except for the obligation to pay money, neither party shall be liable to the other party for any delay or inability to perform its obligations hereunder by reason of acts of God, acts of the public enemy, riot, civil commotion, insurrection, acts or failure to act of governmental authorities, war, or any other cause or causes beyond the party's reasonable control.

Revised 11/6/18

17. Entire Agreement. This Agreement constitutes the entire agreement between the City and FBBG regarding the subject matter hereof and replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument.

18. Notice. All notices required to be given under this Agreement shall be in writing, and shall be deemed to have been duly given (a) when delivered personally to the other party to whom addressed or (b) upon receipt when sent by United States mail postage prepaid, as certified or registered mail, properly addressed as follows or (c) upon confirmation when sent by facsimile transmission and receipt is confirmed by return facsimile transmission:

If to FBBG:

Donald E. Frick/*Brent Bartlett*
Fischer, Brown, Bartlett & Gunn, P.C.
1319 E. Prospect Road
Fort Collins, CO 80525
Fax: (970) 407-1055

If to the City:

Heather Geyer
City Manager
City of Northglenn
11701 Community Center Drive
Northglenn, CO 80233
Fax: (303) 450-8798

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF NORTHGLENN, COLORADO

By: _____

Name: Meredith Leighty

Title: Mayor

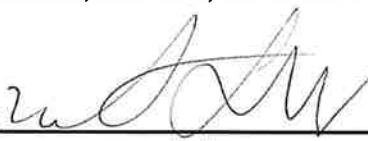
ATTEST:

Johanna Small, CMC Date
City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann Date
City Attorney

FISCHER, BROWN, BARTLETT & GUNN, P.C.

By: 
Brent Bartlett

Title: V.P.

Date: 10/30/20