

**PUBLIC WORKS MEMORANDUM
#4-2022**

DATE: Jan. 10, 2022
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-3 – 2022 Water Rights Special Counsel

PURPOSE

To consider CR-3, a resolution approving an annual contract with Fischer, Brown, Bartlett, Larsen, and Irby, PC (FBBLI) as special water counsel.

BACKGROUND

The City has utilized FBBLI (previously Fischer, Brown, Bartlett and Gunn – FBBG) as special water counsel since 1985. FBBLI retains an extensive record of the legal history related to the water rights owned by the City. FBBLI has a thorough understanding of the City's water system and water rights, and as such has effectively worked on legal issues pertaining to the City's water rights. FBBLI's knowledge of the City's water supply allows them to work in the best interest of the City in protecting its critical water supply assets.

Since January 2018, FBBLI has assisted the City with the Colorado Water Court process for the change of use of 615 shares of Farmers Reservoir and Irrigation Company that have been purchased by the City. Additionally, FBBLI provides legal support in other matters relating to the City's water rights.

Utilization of FBBG (now FBBLI) since 2011 is as follows:

Year	Amount
2011	\$209,847.22
2012	\$73,552.00
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	\$43,589.92
2021 (through Nov. 30)	\$77,322.64

STAFF RECOMMENDATION

Attached is CR-3, a resolution that, if approved, would authorize the Mayor to execute a contract between the City and FBBLI to provide legal services in the amount not to exceed \$200,000. Staff recommends approval of CR-3.

BUDGET/TIME IMPLICATIONS

The cost to provide legal services for 2022 is estimated at \$200,000. Funding is available in the Water Fund for 2022.

STAFF REFERENCE

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

CR-3 – 2022 Water Rights Special Counsel

Legal Services Agreement

SPONSORED BY: MAYOR LEIGHTY

COUNCIL MEMBER'S RESOLUTION

RESOLUTION NO.

No. CR-3
Series of 2022

Series of 2022

A RESOLUTION APPROVING THE LEGAL SERVICES AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND FISCHER, BROWN, BARTLETT, LARSEN & IRBY, 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, Larsen, & Irby, 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 _____, 2022.

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 _____, to be effective as of 01/01/2022, by and between the CITY OF NORTHGLENN, COLORADO, whose address is 11701 Community Center Drive, Northglenn, Colorado 80233 ("City") and FISCHER, BROWN, BARTLETT, LARSEN & IRBY, P.C., a professional corporation, whose address is 1319 E. Prospect Road, Fort Collins, CO 80525 ("FBBLI").

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

1. **Scope of Services.** FBBLI agrees to provide legal services to the City upon the request of authorized representatives of the City, including the City Attorney. FBBLI is customarily engaged in the profession of providing legal services to clients. FBBLI shall not be obligated to work exclusively for the City during the term of this Agreement. However, FBBLI will provide adequate professional time for the performance of legal services requested by the City hereunder. FBBLI 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, 2022, and ending on December 31, 2022.

3. **FBBLI Responsibility.** FBBLI shall be responsible for the performance and supervision of all legal services requested by the City to be performed under this Agreement. In addition, FBBLI shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all legal services performed under this Agreement. FBBLI 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 FBBLI reasonable fees for services rendered by FBBLI attorneys and legal assistants for legal services performed. Reasonable attorney fees billed by FBBLI 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;

Revised 11/6/18

- (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 FBBLI anticipate that legal fees paid to FBBLI 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 FBBLI shall include, at a minimum: A list of FBBLI'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 FBBLI and the Northglenn City Manager (or their designee) shall meet as needed to review significant matters in which FBBLI is or will be engaged for Northglenn. Prior to meeting, as to the ongoing or future significant matter, FBBLI may coordinate with Northglenn's staff and shall prepare: (1) a timeline of activities or tasks to be undertaken by FBBLI, and (2) a forecasted budget. At the meeting between the City Manager or their designee and the representative of FBBLI, the timeline and budget shall be reviewed and discussed. As appropriate, necessary, or desirable the City Manager, in coordination with the representative of FBBLI and Northglenn staff, may modify the tasks FBBLI 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 FBBLI 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 FBBLI regarding a statement.

B. FBBLI 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. FBBLI 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 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 FBBLI's Representatives will be: Donald E. Frick, Daniel K. Brown, Brent Bartlett or Sara Irby.

8. **Key Personnel.** FBBLI shall assign the following employees of FBBLI 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 FBBLI: Daniel K. Brown, Brent Bartlett, Sara Irby, Donald E. Frick, Whitney Coulter and Todd Rogers.

9. **Insurance.** FBBLI 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 FBBLI or any person, firm or corporation employed by or otherwise connected with FBBLI, 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 FBBLI 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 FBBLI an agent or employee of the City for any purpose. FBBLI shall in all respects be an independent contractor of the City in its performance of the legal services, and FBBLI 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 FBBLI.** FBBLI 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 FBBLI or some other entity.

13. **Payment of Taxes.** FBBLI 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 FBBLI 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.

17. Entire Agreement. This Agreement constitutes the entire agreement between the City and FBBLI 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 FBBLI:
Sara J. L. Irby
Fischer, Brown, Bartlett, Larsen & Irby, 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, LARSEN & IRBY,
P.C.

By:  _____
Sara J. L. Irby

Title: Attorney / Shareholder

Date: 11/17/21

FISCHER, BROWN, BARTLETT, LARSEN & IRBY'S BILLING POLICIES
January 1, 2021

Fischer, Brown, Bartlett, Larsen & Irby will bill you generally on a monthly basis for work done by attorneys and assistants. Our bills will be narrative form and will describe the services rendered. The principle basis for any bill will be the time spent by attorneys and legal assistants working on your behalf. The hourly billing rates of attorneys and assistants vary with experience and skill of the attorney or assistant doing the work. The current hourly rates for attorneys and legal assistants are as follows:

Brent Bartlett	\$325
Daniel Brown	\$325
Sara Irby	\$325
Todd Rogers	\$325
Whitney Phillips	\$225
Julie Martinez (legal assistant)	\$125
Theresa Dickey (legal assistant)	\$125

Although our hourly billing rates are a primary factor in our billings, they are not the only factor. It is important to us that all of our invoices are fair and reasonable in relation to the work performed, and, therefore, our bills may be adjusted upward or downward depending upon a variety of factors that bear on the reasonableness of the bill, including those factors set forth in the Colorado Rules of Professional Conduct governing the practice of law:

- (1) the time and labor required, the novelty and difficulty of the questions 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 other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations 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.

We adhere to these rules and consider each in all of our billings as we want you to be satisfied that the amounts we bill are appropriate and fair. Statements are due upon receipt unless other arrangements have been made. A set percentage of 2% of fees is applied to each billing statement to cover general administrative expenses incurred in providing services such as photocopies, postage, facsimiles, and long distance charges. Any non-standard charges or amounts paid on the client's behalf (such as express mail charges, conference call charges, court fees, recording fees, wire transfer fees) are included in addition to these standard expenses and are set forth in the billing statement.

We will, in the performance of our work for you, seek to adhere to the highest quality of professional standards, to perform our work in a competent and conscientious manner, and to do work as efficiently and effectively as possible. You are however, free to terminate our relationship at any time and for any reason, as are we. Finally, we encourage you to call us with any questions or concerns you might have regarding our billing statements, status or progress of your matter, or with any other concerns or questions. Our goal is that you are completely satisfied with our services as we render them. If you're not, you would be doing us a true favor by letting us know.

PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH A WORKER WITHOUT AUTHORIZATION

FROM: Fischer, Brown, Bartlett, Larsen + Ivby, PC
(Prospective Contractor)

TO: City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233-8061

Project Name _____

Bid Number _____ Project No. _____

As a prospective Contractor for the above-identified bid, I (we) do hereby certify that, as of the date of this certification, I (we) do not knowingly employ or contract with a worker without authorization who will perform work under the Agreement and that I (we) will confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment.

Executed this _____ day of _____, 20__.

Prospective Contractor Fischer, Brown, Bartlett, Larsen + Ivby, P.C.

By: 

Title: Sara J.L. Ivby
Attorney / Shareholder

To be completed if contractor is providing services and has employees.

DEPARTMENT PROGRAM AFFIDAVIT

(To be completed if Contractor participates in the Department of Labor Lawful Presence Verification Program)

I, FBBLI, as a public contractor under contract with the City of Northglenn (the "City"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Contract") with the City within twenty (20) days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Contract; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Contract.

[Signature]
Contractor Signature

11/17/21
Date

STATE OF COLORADO)
) ss.
COUNTY OF Lincoln)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 17th day of November, 2021, by Sara Irby as Attorney/Shareholder of FBBLI.

My commission expires: 03-31-25

(S E A L)

[Signature]
Notary Public

THHERESA MICHALE DICKEY
Notary Public
State of Colorado
Notary ID # 20214012758
My Commission Expires 03-31-2025

To be completed if contractor is providing services and has employees.