

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)
A CONTRACT WITH HARRANG, LONG,))
GARY, RUDNICK P.C. FOR LEGAL)
SERVICES ON COUNCIL CONTRACT-)
ING AUTHORITY)

RESOLUTION NO. 94-1996

Introduced by the Govern-
mental Affairs Committee

WHEREAS, the Metro Council approved Resolution No. 94-1939 on March 24, 1994 authorizing the General Counsel to employ outside legal counsel to advise the Council regarding its authority under the 1992 Metro Charter to control the approval of contracts and contract amendments; and

WHEREAS, Metro General Counsel entered into a contract with the firm of Harrang Long Gary Rudnick, P.C. on April 15, 1994 to obtain advise on the Metro Council's contracting authority; and

WHEREAS, the Metro Council approved Resolution No. 94-1973 on June 9, 1994 directing special legal counsel to initiate litigation to obtain a judicial declaration as to the validity of Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc. executed by the Metro Executive Officer on March 16, 1994; now therefore,

BE IT RESOLVED,

1. That the Metro Council acting as the Contract Review Board exempts Contract Amendment No. 1 from the competitive procurement procedures of Section 2.04.053 of the Metro Code.
2. That the Metro Council approves Amendment No. 1 attached hereto to the contract with Harrang Long Gary Rudnick, P.C.

ADOPTED by the Metro Council this 23rd day of June, 1994.



Judy Wyers, Presiding Officer

AMENDMENT NO. 1

ADDITIONAL SCOPE OF WORK, TERM, AND CONTRACT AMOUNT

That Contract between Metro and Harrang Long Gary Rudnick, P.C. hereinafter referred to as "CONTRACTOR" dated April 15, 1994 for legal services, Contract No. 903664, is hereby amended to:

- 1) add the Scope of Work as described in Exhibit A attached hereto;
- 2) extend the length of the contract to December 31, 1994; and
- 3) increase the maximum amount that Metro shall pay to the CONTRACTOR for services provided to SEVENTY FIVE THOUSAND AND NO/100TH (\$75,000) dollars.

All other terms of the Contract remain in full force and effect.

DATED the _____ day of June, 1994.

CONTRACTOR

METRO

By: _____

By: _____

EXHIBIT A
Amendment No. 1
Contract#903664

SCOPE OF WORK

The CONTRACTOR shall file proceedings for a judicial declaration as to the validity of Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc. executed by the Executive Officer on March 16, 1994; and the CONTRACTOR shall represent the Metro Council in such proceeding at the trial level.



METRO

Date: June 9, 1994

To: Council Legal Group
(Wyers, Gates, Monroe and Van Bergen)

From: Donald E. Carlson, ^{DC} Council Administrator

Re: Legal Expenses for Special Outside Counsel

Please find attached a letter from Bill Gary detailing expenses to date and projected expenses depending on Council action tonight on the Devlin and Van Bergen resolutions. Bill indicates costs through May 25, 1994 total \$14,536.63 and will likely be around \$20,000 by the end of this evening (when the Council makes a decision). If the Devlin resolution is adopted he anticipates another \$10,000 for a formal written opinion. If the Van Bergen resolution is adopted, he estimates the total cost (including those incurred to date) to obtain a declaratory judgement at the trial level to be "well under \$100,000".

I asked Bill to segregate the costs by those related to the general question of authority under the Charter (general Metro costs) and those related to the analysis of the validity of Amendment No. 4 (Solid Waste related costs). Bill indicates that it is difficult to do so he hasn't done it but also states that in his judgement "all of the work that we have done to date is directly related and necessarily linked to the analysis of the validity of contract Amendment No. 4". Based on this statement it appears that we could charge the costs to date to the Solid Waste function. He points out that the legal opinion requested under the Devlin option would not be, in his opinion, attributable to the analysis of contract Amendment No. 4 but rather to the broader questions in their own right.

Please review this material and advise me how you want to pay the bill. We have Ordinance No. 94-553 in the Finance Committee as a vehicle to budget for this purpose. Also, we will have to amend the contract with Harrang Long since the expenditure limit at this time is \$10,000. I'll prepare the necessary resolution for Council action.

June 9, 1994

SENT VIA FACSIMILE

Mr. Donald Carlson, Administrator
Metro Council
600 NE Grand Avenue
Portland, OR 97232-2736

Dear Don:

You have asked for an estimate of additional legal expenses that would be incurred if the Council approves either the Van Bergen resolution or the Devlin resolution. You also have asked that we attempt to segregate attorney fees incurred to date according to which portion of those fees related to an analysis of the powers and duties of the Metro Council and the Executive Officer, respectively, and which portion related to analysis of the validity of Amendment No. 4 to the waste disposal contract.

As you know, our initial assignment was to analyze the powers and duties vested in the Council and the Executive Officer under the 1992 Metro Charter and to determine, under the Charter, what powers and duties the Council validly has assigned to the Executive Officer. According to the terms of our engagement, we were to report to the Council regarding our preliminary conclusions on those issues before proceeding to address specific questions related to the validity of Amendment No. 4. Upon completion of our analysis of the Metro Charter, the answers to the questions related to Amendment No. 4 sorted out fairly easily. When we reported to a sub-committee of the Council and, later, to the Council, meeting in Executive Session, we presented our analysis with respect to all of the questions we were engaged to address, including our analysis of the validity of contract Amendment No. 4 and the options available to the Council.

It is my judgment that all of the work that we have undertaken to date is directly and necessarily linked to the analysis of the validity of contract Amendment No. 4. If we had been engaged only to assess the validity of the contract amendment, we would have approached the assignment in exactly the same way we did here. It would have been necessary for us to do all of the work that we have completed to date in order to address that issue. Accordingly, it is impossible for us to segregate our time as you request. It fairly may be said that all of our work to date has been directed at determining the validity of contract Amendment No. 4.

750 FRONT STREET N.E.

SUITE 100

SALEM, OREGON

97301

TELEPHONE:

503.362.8726

FACSIMILE:

503.371.2946

OFFICES ALSO IN

EUGENE & ROSEBURG

Mr. Donald Carlson
June 9, 1994
Page 2

Through May 25, 1994, the Council has incurred attorney fees in the amount of \$14,442.50 and costs and expenses in the amount of \$94.13. Since May 25, we have performed substantial additional work in connection with our presentations to the Council and Council members. I expect that, by the time the Council has decided how it wishes to proceed in this case, our total attorney fees will be approximately \$20,000.

Because we have completed our entire analysis regarding all of the questions identified in the scope of work, if the Council approves the Devlin resolution, we should be able to complete a full opinion for approximately \$10,000. If the Council chooses to ratify contract Amendment No. 4, the additional work that we perform in issuing an opinion regarding authority under the Charter, would not fairly be attributable to analysis of the validity of contract Amendment No. 4. Rather, it would be addressed to the broader questions in their own right.

If the Council approves the Van Bergen resolution, it is far more difficult to estimate the total cost of additional attorney work. Once litigation is initiated, Metro loses control of the scope of the litigation and the manner in which it is conducted. Undoubtedly, Oregon Waste Systems would be a party to the litigation and it may choose to assert counterclaims and initiate extensive discovery and motion practice. Our goal would be to present the question of the validity of contract Amendment No. 4 to the court in a narrowly drawn and focused declaratory judgment proceeding. If we are successful in doing so, we believe the issue could be resolved at the trial level for a total cost, including fees incurred to date, of well under \$100,000.

I have had a very preliminary discussion with Jake Tanzer, special legal counsel to the Metro Executive. Based upon that conversation, I believe it may be possible to structure a declaratory judgment proceeding that maintains a narrow focus. If the Council approves the Van Bergen resolution, I propose to prepare a litigation plan and budget that addresses the potential cost in greater detail.

If the Council approves the Van Bergen resolution, the resulting litigation will deal directly with the validity of contract Amendment No. 4. Accordingly, all of the litigation expense will fairly be attributable to that issue.

Enclosed is our statement for services rendered through May 25, 1994. I have provided a copy of the statement and a copy of this letter to Presiding Officer Wyers. Please let me know if you need any additional information or if there is something more that we should do to facilitate processing the statement for payment.

Mr. Donald Carlson
June 9, 1994
Page 3

Thank you for your attention to this matter.

Sincerely,

William F. Gary
William F. Gary

WFG:ja

Enclosure

cc: Judy Wyers, Presiding Officer



METRO

Date: June 14, 1994

To: Governmental Affairs Committee

From: ^{DE} Donald E. Carlson, Council Administrator

Re: Draft Resolution No. 94-1996 Amending the Contract with Harrang Long Gary Rudnick, P.C. for Legal Services on Council Contracting Authority

Please find attached for your consideration draft Resolution No. 94-1996. The resolution amends the contract with the Councils special legal counsel to seek a judicial declaration as to the validity of Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc. The proposed amendment does three things: 1) it adds an additional Scope of Work; 2) it extends the length of the contract to December 31, 1994; and 3) it increases the maximum amount of the contract to \$75,000.

Also, attached is a memo from me to the Councils legal group which transmits Bill Gary's estimate of potential legal costs and his view on whether the services are related to Metro generally or specific to the Solid Waste function. Based on his view of the work performed to date and the action taken by the Council to approve Resolution No. 94-1973 on June 9, 1994, it is my recommendation that the costs under this contract be charged to the solid waste function. I will prepare the necessary amendments to both the FY 1993-94 and FY 1994-95 Budgets for Council consideration.

cc: Dan Cooper
Bill Gary

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

RESOLUTION NO. 94-1996, AMENDING THE CONTRACT WITH HARRANG LONG GARY RUDNICK, P.C. FOR LEGAL SERVICES ON COUNCIL CONTRACTING AUTHORITY

Date: June 15, 1994

Presented by: Councilor Van Bergen

COMMITTEE RECOMMENDATION: At its June 14, 1994 meeting the Governmental Affairs Committee voted 3-0 to recommend Council adoption of Resolution No. 94-1996. Voting in favor were Councilors Gates, Van Bergen, and Wyers. Councilor Buchanan was absent.

COMMITTEE DISCUSSION/ISSUES: Council Administrator Don Carlson presented the staff report. He described the scope of work to be performed by outside counsel, and said the amount of the contract would be increased to an amount not to exceed \$75,000 to provide legal services following Council's direction from its June 9 meeting. Mr. Carlson said two budget amendments would be required: one to amend the 1993-94 budget to pay costs incurred to date, increasing the amount from the \$10,000 currently authorized to \$30,000; and one to amend the 1994-95 budget to add \$45,000 to the budget of the Office of General Counsel for the remaining costs.