

BILL NO. S-12-04-19

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PROFESSIONAL SERVICES AGREEMENT - FINANCIAL ADVISOR between CROWE HORWATH, LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the PROFESSIONAL SERVICES AGREEMENT - FINANCIAL ADVISOR by and between CROWE HORWATH, LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

will provide certain professional services for the Utilities funding for the water rate and financing case (Exhibit "A" attached hereto and made a part hereof);

involving a total cost of ONE HUNDRED NINETY THOUSAND AND 00/100 DOLLARS - (\$190,000.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

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Crowe Horwath LLP
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February 3, 2012

Mr. Kumar Menon, Director
City Utilities
City of Fort Wayne
200 East Berry Street
Fort Wayne, Indiana 46802-1804

Dear Kumar:

The purpose of this letter is to formulate a mutually acceptable agreement between the Fort Wayne Municipal Sewage Works, Municipal Stormwater Utility, and Municipal Water Utility ("Utilities") and Crowe Horwath LLP ("Crowe") pursuant to which Crowe will perform certain professional services for the Utilities as directed by the Utilities' management or its representatives.

Services provided by Crowe under this agreement would include, but not be limited to, general consulting services related to: rate sufficiency; cost-of-service or rate design matters; regulatory procedural or issue related advice; operational or procedural matters; financing alternatives related to funding capital improvements; continuing disclosures, filings, or rating agency matters; and other general accounting, tax or financial services as required or requested.

Crowe will be acting in an individual capacity while performing services for the Utilities and will not, unless otherwise indicated, be acting as agents, employees, partners, joint ventures or associates of the Utilities. Crowe will provide services in accordance with the attached Engagement Terms (Attachment A) using qualified consultants to supervise all services provided. The consultants expected to provide these supervisory services are John Skomp, Jennifer Wilson, Angie Steeno, and Michael Amore.

Services provided by Crowe will be billed based on the actual number of hours worked and the actual out-of-pocket expenses incurred during the previous billing period. Crowe's invoices will include a breakdown of the cost of the individual projects that were worked on during the time period being billed. Crowe's hourly rates range as follows:

Partner/Director	\$ 310 to \$ 370
Senior Manager	200 to 250
Manager	155 to 200
Staff	100 to 125
Out-of-pocket expenses	At Cost

This mutually acceptable agreement between the Utilities and Crowe is intended to cover general consulting services during 2012 with an estimated annual amount of \$190,000. The anticipated projects and estimated fees associated with each project are as follows:

Mr. Kumar Menon, Director
City Utilities
City of Fort Wayne
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Water Utility Projects

Financial Consultant Engagements

- Waterworks Utility Revenue Bond Anticipation Notes - \$60,000
- Waterworks Utility Revenue Bonds of 2012 - \$25,000

Rate Consultant Engagements

- Indiana Utility Regulatory Commission (IURC) Rate and Financing Approval Process - \$75,000

Sewage Works Projects

Rate Consultant Engagements

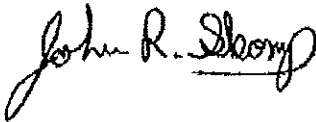
- Assistance with Hometown Rates and Charges - \$30,000

Specific projects will be billed separately based on the actual hours worked and the actual out-of-pocket expenses incurred for each project.

Invoices that are not paid within 30 days of receipt are subject to a monthly interest charge of one percent (1.0%) per month or the highest interest rate allowed by law, whichever is less, which we may elect to waive at our sole discretion, plus costs of collection including reasonable attorneys' fees.

Enclosed are two copies of this agreement. If the terms and conditions are agreeable to the Utilities, please sign and return one of the copies to Crowe.

Respectfully submitted,



John R. Skomp

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Crowe Engagement Terms

Crowe Horwath LLP ("Crowe") wants you to understand the basis under which we offer our services to you and determine our fees, as well as to clarify the relationship and responsibilities between your organization and ours. These terms are part of our engagement letter and apply to all future services, unless a specific engagement letter is entered into for those services. We specifically note that no advice we may provide should be construed to be investment advice.

YOUR ASSISTANCE - For us to provide our services effectively and efficiently, you agree to provide us timely with the information we request and to make your employees available for our questions. You will also provide our personnel with access to the Internet (if available). The availability of your personnel and the timetable for their assistance are key elements in the successful completion of our services and in the determination of our fees. Completion of our work depends on appropriate and timely cooperation from your personnel; complete, accurate, and timely responses to our inquiries; and timely communication by you of all significant accounting and financial reporting matters of which you are aware. If for any reason this does not occur, a revised fee to reflect the additional time or resources required by us will be mutually agreed upon, and you agree to hold us harmless against all matters that arise in whole or in part from any resulting delay.

If circumstances arise that, in our professional judgment, prevent us from completing this engagement, we retain the right to take any course of action permitted by professional standards, including declining to express an opinion or issue other work product or withdrawing from the engagement.

THIRD PARTY PROVIDER - We may use a third-party service provider in providing professional services to you which may require our sharing your confidential information with the provider. If we use a third-party service provider, we will enter into a confidentiality agreement with the provider to require them to maintain the confidentiality of your confidential information. The terms of our engagement letter and these engagement terms shall apply to any third party provider.

CONFIDENTIALITY - We will maintain the confidentiality of your confidential information in accordance with professional standards. You agree not to disclose any confidential material you obtain from us without our prior written consent, except to the extent such disclosure is an agreed objective of this engagement. Your use of our work product shall be limited to its stated purpose and to your business use only. We retain the right to use the ideas, concepts, techniques, industry data, and know-how we use or develop in the course of the engagement. You agree to the use of fax, email, and voicemail to communicate both sensitive and non-sensitive matters; provided, however, that nonpublic personal information regarding your customers or consumers shall not be communicated by unencrypted email.

CONSUMER PRIVACY - In order to provide the services called for in this engagement, you may be disclosing to us certain nonpublic personal information regarding your accounts, customers, and consumers. To the extent permitted by law, we will not disclose any such nonpublic personal information except to you and our employees and agents. However, in circumstances that fall under an exception in the regulations "Privacy of Consumer Financial Information" implementing the Gramm-Leach-Bliley Act, we may disclose or use such nonpublic personal information in the ordinary course of business to carry out the services in this engagement. We have implemented and will maintain physical, electronic and procedural safeguards ("Safeguards") reasonably designed to protect the security, confidentiality and integrity of, to prevent unauthorized access to or use of, and to ensure the proper disposal, of nonpublic personal information regarding your customers or consumers. We further agree that

ATTACHMENT A
(Continued)

the Safeguards shall meet the objectives of the Interagency Guidelines Establishing Information Security Standards, adopted by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, as they currently exist, or as they may be amended from time to time.

CHANGES - We may periodically communicate changes in laws, rules, or regulations to you. However, you have not engaged us to and we do not undertake an obligation to advise you of changes in laws, rules, regulations, industry or market conditions, your own business practices, or other circumstances, except to the extent required by professional standards.

PUBLICATION - You agree to obtain our specific permission before using our report or our firm's name in a published document, and you agree to submit to us copies of such documents to obtain our permission before they are filed or published.

NO PUNITIVE OR CONSEQUENTIAL DAMAGES - Any liability of Crowe to you shall not include any special, indirect, consequential, incidental, punitive, or exemplary damages or loss nor any lost profits, savings, or business opportunity.

LIMIT OF LIABILITY - The provisions of this section establishing a limit of liability will not apply if, as determined in a judicial proceeding, we performed our services with gross negligence or willful misconduct. Our engagement with you is not intended to shift risks normally borne by you to us. With respect to any services or work product or this engagement in general, the liability of Crowe and its personnel shall not exceed the fees we receive for the portion of the work giving rise to liability. A claim for a return of fees paid shall be the exclusive remedy for any damages. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted. This limitation of liability shall also apply after termination of this agreement.

INDEMNIFICATION FOR THIRD-PARTY CLAIMS - The provisions of this section for indemnification will not apply if, as determined in a judicial proceeding, we performed our services with gross negligence or with willful misconduct. Our engagement with you is not intended to shift risks normally borne by you to us. In the event of a legal proceeding or other claim brought against us by a third party, you agree to indemnify and hold harmless Crowe and its personnel against all costs, fees, expenses, damages, and liabilities, including defense costs and legal fees, associated with such third-party claim arising from or relating to any services or work product that you use or disclose to others or this engagement generally. This indemnification is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted. This indemnification shall also apply after termination of this agreement.

NO TRANSFER OR ASSIGNMENT OF CLAIMS - No claim against Crowe, or any recovery from or against Crowe, may be sold, assigned or otherwise transferred, in whole or in part.

TIME LIMIT ON CLAIMS - In no event shall any action against you or Crowe, arising from or relating to this engagement letter or the services provided by Crowe relating to this engagement, be brought after the earlier of 1) two (2) years after the date on which occurred the act or omission alleged to have been the cause of the injury alleged; or 2) the expiration of the applicable statute of limitations or repose.

ATTACHMENT A
(Continued)

RESPONSE TO LEGAL PROCESS - If we are requested by subpoena, other legal process, or other proceedings to produce documents pertaining to you and we are not a named party to the proceeding, you will reimburse us for our professional time, plus out-of-pocket expenses, as well as reasonable attorney fees we incur in responding to such request.

MEDIATION - If a dispute arises, in whole or in part, out of or related to this engagement, or after the date of this agreement, between you or any of your affiliates or principals, and Crowe, and if the dispute cannot be settled through negotiation, you and Crowe agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its mediation rules for professional accounting and related services disputes before resorting to litigation or any other dispute-resolution procedure. The results of mediation shall be binding only upon agreement of each party to be bound. Costs of any mediation shall be shared equally by both parties.

JURY TRIAL - In the unlikely event that differences concerning our services or fees arise between us that are not resolved by mutual agreement or mediation, you and we agree to waive a trial by jury to facilitate judicial resolution and save the time and expense of both parties.

LEGAL AND REGULATORY CHANGE - The scope of services and the fees for the services covered by the accompanying letter are based on current laws and regulations. If changes in laws or regulations change your requirements or the scope of our work, you and we agree that our fees will be modified to a mutually agreed-upon amount to reflect the changed level of our effort.

NON-SOLICITATION - You and we acknowledge the importance of retaining key personnel. Accordingly, both parties agree that during the period of this agreement and for one year after its expiration or termination, neither party will solicit any personnel of the other party for employment without the written consent of the other party. If an individual becomes an employee of the other party, the other party agrees to pay a fee equal to the individual's compensation for the prior full twelve-month period to the original employer.

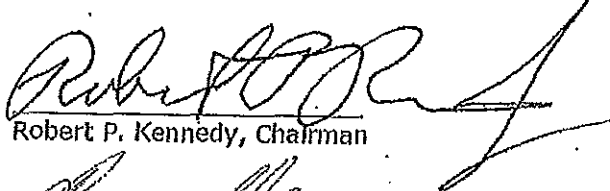
AFFILIATES - Crowe Horwath LLP is an independent member of Crowe Horwath International, a Swiss veren. Each member firm of Crowe Horwath International is a separate and independent legal entity. Crowe Horwath LLP and its affiliates are not responsible or liable for any acts or omissions of Crowe Horwath International or any other member of Crowe Horwath International and specifically disclaim any and all responsibility or liability for acts or omissions of Crowe Horwath International or any other member of Crowe Horwath International. Crowe Horwath International does not render any professional services and does not have an ownership or partnership interest in Crowe Horwath LLP. Crowe Horwath International and its other member firms are not responsible or liable for any acts or omissions of Crowe Horwath LLP and specifically disclaim any and all responsibility or liability for acts or omissions of Crowe Horwath LLP.

IN WITNESS WHEREOF, CITY and ENGINEER have executed this Professional Services Agreement.

APPROVED CITY OF FORT WAYNE

BOARD OF PUBLIC WORKS

BY:


Robert P. Kennedy, Chairman

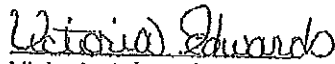
BY:


Kumar Menon, Member

BY:


John Suarez, Member

ATTEST:


Victoria Edwards, Clerk

DATE:

March 28, 2012