

Agreement to Hire Lawyers Regarding Claims and Assignment of Claim

Scope of Limited Contingent Fee Representation

The City of Raton, New Mexico (hereinafter "Raton") hires Rogge Dunn, individually (hereinafter "Dunn") and Clouse Dunn LLP (Dunn and Clouse Dunn LLP hereinafter collectively "CD") to prosecute its claims for damages against the parties responsible for the power generating equipment manufactured by Wartsila Finland OY that occurred on or about October 18, 2012, in Raton, New Mexico (hereinafter "this Case"). Dunn, CD and Raton hereinafter collectively referred to as the "Parties."

CD is representing the City of Raton only in its capacity as a municipality and not any of its executives, employees, city council members, agents, subsidiaries, affiliates or related entities. CD does not agree to defend Raton against any counterclaim or handle any appeals. CD is not representing Raton in any other matters. CD's representation shall be strictly limited to this Case unless otherwise confirmed in writing.

In the event of any dispute between or among them, the Parties agree to exclusive, mandatory and sole jurisdiction and venue in Denver, Colorado. The Texas Disciplinary Rules of Professional Conduct (hereinafter "TDR") shall control, to the exclusion of any other ethics codes, to the extent that any ethical rules govern the Parties' rights and obligations. CD's obligations shall be governed by the TDR, even if it works in another state or federal court. CD's lawyers are not licensed to practice law in any state besides Texas.

Outcome Not Guaranteed

CD has made no guarantees regarding this Case and cannot predict whether Raton will win this Case or any potential consequences of prosecuting this Case. Any opinions CD expresses concerning this Case are opinions -- not guarantees.

Raton's Responsibility to Pay Lawyers' Fees

A. Lawyers' Fees

Raton agrees to pay CD for their services on the following contingent fee basis: thirty-three and one-third percent (33 1/3 %) of the Total Recovery. All attorneys' fees will be taken out of the Total Recovery, if any, made in this Case. Raton will not pay any attorneys' fees out of its own pocket.

B. No Attorneys Will Be Owed, If There Is No Recovery

Raton will not pay attorneys' fees if there is no recovery. If this Case goes all the way to an arbitration hearing or trial and Raton loses this Case, the arbitrator or judge will likely award taxable court or arbitration costs against Raton. However, Hartford Steamboiler Inspection & Insurance Company (hereinafter "Insurer") shall Indemnify and hold Raton harmless against any award of fees, court or arbitrations costs.

C. Definition of Total Recovery

The Total Recovery is the total amount recovered by settlement, arbitration award, jury verdict or judgment, including, but not limited to, any amount recovered as compensatory, liquidated or punitive damages, pre-judgment interest, post-judgment interest, attorneys' fees, penalties, expert witness fees, and arbitration/court costs. There is nothing to be subtracted in determining the Total Recovery.

Litigation Expenses

CD will incur "Litigation Expenses" to handle this Case. Insurer has already advanced and will continue to advance all Litigation Expenses.

A. Raton Will Pay No Litigation Expense if There Is No Recovery

If there is no recovery, Insurer shall pay for all of the Litigation Expenses including without limitation any taxable court or arbitration costs and Raton will pay nothing for the Litigation Expenses.

If there is a recovery, after attorneys' fees are deducted, Insurer will first receive reimbursement for the Litigation Expenses it advanced before any amounts are distributed to Raton out of the Total Recovery. Raton will never pay any Litigation Expenses out of Raton's own pocket. Raton's only obligation for Litigation Expenses is Raton's agreement that Insurer is first reimbursed for the Litigation Expenses it advanced.

B. The Carrier HSB Advances Litigation Expenses per the Pro Rata Agreement

More details concerning the Litigation Expenses are contained in the Proration Agreement between Raton and Insurer.

Assignment of the Client's Claims

To secure performance of the fee and expense obligations herein, Raton grants, transfers and assigns to CD an undivided interest in this Case, such interest being the amount of the percentage Raton is obligated to pay as attorneys' fees and expenses under this Agreement. If CD withdraws from representing Raton without good cause, CD will forfeit its rights to the assignment. If CD withdraws from representing Raton with good cause, or Raton fires CD without good cause, CD is still entitled to receive the assigned contingent attorneys' fees percentages stated in this Agreement.

Team Approach

Dunn anticipates taking an appropriate role in analyzing this Case and providing Raton with advice and, if appropriate, overseeing the negotiation, arbitration or litigation of this Case. However, CD will employ a team approach and use other attorneys and paralegals associated with or employed by CD now or in the future. CD does not promise that Dunn will do most or all

of the work on this Case or that any particular attorney other than Dunn will do any work on this Case.

Your Right to Fire CD

Raton may fire CD at any time, even if Raton has no reason. However, unless Raton has good cause for the firing, Raton agrees to pay CD for any unreimbursed expenses and the contingent attorneys' fees percentages stated herein in the event of a monetary recovery on its claim. One or more attorneys leaving CD, or the reformulation, dissolution, or merger of CD is not good cause for Raton to fire Dunn or CD provided that Dunn and/or other attorneys at CD are ready, willing and able to continue the representation of Raton in a competent manner.

Raton shall not be made a party to any dispute over allocation of contingent attorney's fees as between Dunn and CD.

CD's Right to Withdraw from Representing Raton

Even after a lawsuit or arbitration is filed, CD may discover facts indicating to them that this Case should be dismissed, potential defendant(s) do not have insurance or sufficient assets to respond to a judgment or award or liability is unlikely or problematic; Raton is not cooperating, and/or the TDR permits or requires them to withdraw. Raton agrees that CD may withdraw upon a showing of good cause under any of these circumstances.

If CD withdraws, CD will strive to protect Raton's interests to the extent reasonably possible by giving Raton notice and, upon Raton providing CD reasonable notice, give Raton any papers/property in their possession that belong to Raton. Raton agrees that CD has no duty to find Raton other attorneys if they withdraw. If CD withdraws for reasons other than non-cooperation by Raton or because withdrawal is required by the TDR, CD shall not be entitled to contingent attorneys' fees.

No Prior Promises or Reliance, Except What is Specifically Stated in This Agreement

The Parties have signed this Agreement to avoid the time, trouble and expense of litigation and because of the specific benefits they are receiving, which are all listed in this Agreement. The Parties promise and represent that no representations, promises, statements, review of documents, information, materials, internet postings, website(s), presentations or agreements that are not specifically stated in this Agreement have been made on which they are relying or that caused them to sign this Agreement. **The Parties promise and represent that the Parties are relying only on the promises and representations stated herein and ARE RELYING ON THEIR OWN JUDGMENT** after an opportunity to seek separate counsel regarding the advisability of signing this Agreement. The Parties promise and represent that nothing has been reviewed or been said prior to signing this Agreement on which they are relying on or that is motivating them to sign this Agreement, except what is specifically stated in this Agreement. **This Agreement states all agreements and understandings between the**

Parties and supersedes any prior oral or written statements, representations, information, materials or agreements.

What this Agreement Covers

This Agreement states the entire agreement between the Parties, and supersedes and takes the place of any prior oral or written agreements. The terms of this Agreement may be changed only by a **separate written agreement** signed and dated by the Parties before a notary public.

The Parties promise, warrant and represent that no representations, promises, statements, review of materials, presentations or agreements not specifically expressed herein have been made to any of them that caused them or motivated them to sign this Agreement. This Agreement contains all of the reasons, consideration and motivation for why all Parties have signed this Agreement. The Parties promise, represent and warrant that they are relying on their own judgment after an opportunity to seek independent counsel.

Any and All Disputes Shall be Decided Exclusively by Binding Arbitration

Any and all disputes among or between the Parties to this Agreement shall be exclusively resolved by mandatory, binding arbitration. This includes, but is not limited to, any and all disputes arising under, out of or related to this Agreement, CD's representation of Raton and any claims for malpractice, negligence, breach of: fiduciary duty, breach of the duty of good faith and fair dealing, warranty, contract or any other claims between or among the Parties. The Parties intend for their agreement to arbitrate to be as broad as possible.

Prior to the arbitration the Parties agree to participate in a full-day mediation before a mutually acceptable mediator. If the Parties cannot agree on a mediator, the matter will be mediated by the Judicial Arbitration and Mediation Service (hereinafter "JAMS") office located in Denver, Colorado. If the Parties cannot resolve their dispute in mediation, the Parties agree to proceed to an arbitration before the American Arbitration Association (hereinafter "AAA") pursuant to the AAA Commercial Arbitration Rules, except that the Parties shall use three AAA arbitrators to decide the dispute. All mediation and arbitration costs will be borne equally by the Parties. If more than two parties are involved, the costs of the arbitration shall be split on a pro rata basis, based on the number of parties involved. However, at the end of the arbitration, the AAA can award or allocate the arbitration fees between the Parties, as permitted by the AAA Rules. Except as provided for in this Agreement, all other AAA rules shall apply. There shall be no award of attorney's fees in the Arbitration. The Arbitration shall be held in Denver, Colorado.

If the Parties have not agreed to attend mediation within thirty (30) days of any Party demanding mediation and any Party is not cooperating to schedule a mediation, the other Party(ies) shall have the option to file a lawsuit to compel any Party to comply with the dispute resolution procedures in this Agreement, including but not limited to, scheduling and participating in a mediation.

JURY WAIVER

By entering into this Agreement, **RATON AND CD AGREE TO WAIVE ANY RIGHTS THAT THEY MAY HAVE TO A JURY TRIAL**, filing a lawsuit or to pursuing any dispute against each other in court. Further, the Parties agree that the arbitrators' decisions shall be binding, final and conclusive. The Parties, however, can file a lawsuit to compel arbitration, seek injunctive or other relief or to enforce, perfect or establish a lien for attorneys' fees and/or to enforce or appeal the arbitrators' decision.

Miscellaneous

If any provision of this Agreement is held to be invalid or unenforceable, the Parties want a court to use the so called blue pencil procedure to, if possible, reform the provision to be enforceable and the Parties want the remaining portions of this Agreement to be enforced to the fullest extent permitted by law. This Agreement will be effective upon the signature of the Parties and can be executed in multiple identical counterparts and via e-mail and fax.

Choice of Law

This agreement shall be construed in accordance with the law of the State of New Mexico.

Our Relationship Automatically Ends When this Case is Resolved

Our attorney-client relationship ends upon written notice or automatically upon a settlement, judgment or award.

CONSIDER YOUR OPTIONS AND SEEK ADVICE OF OTHER COUNSEL

READ CAREFULLY: THIS IS YOUR CONTRACT. IT PROTECTS BOTH YOU AND YOUR ATTORNEYS AND WILL PREVENT MISUNDERSTANDINGS.

THE LAWYERS DO NOT PROMISE OR GUARANTEE THAT THEY WILL RECOVER ANY MONEY FOR YOU IN THIS CASE.

The Client and the Lawyers have read this Agreement and agree to all of its terms.

CITY OF RATON

By: _____

Date: _____

Its: _____

Signatory's printed name: _____

RATON PUBLIC SERVICE COMPANY

By: _____

Date: _____

Its: _____

Signatory's printed name: _____

CLOUSE DUNN LLP

By: _____

Date: _____

R. Rogge Dunn, its Partner

Date: _____

R. Rogge Dunn, Individually

PRORATION AGREEMENT

Purpose and Scope of This Agreement

The Hartford Steamboiler Inspection & Insurance Company (the "Insurer"), as subrogated insurer to The City of Raton, New Mexico (the "Insured"), and the Insured (collectively "the Client"), hire Rogge Dunn and the law firm of Clouse Dunn LLP ("CD") (collectively "the Lawyers") to represent the Insured only to prosecute the Insured's claims for damages against the persons or entities responsible for a power generating engine failure that occurred on or about October 18, 2012 at the City of Raton's power generating facility ("this Case"). (Insured and Insurer hereinafter collectively "the Parties").

Rogge Dunn and CD will be jointly representing Insured and Insurer pursuant to separate written representation agreements at the same time in this Case. Insured and Insurer have no objection to and authorize the Lawyers to jointly represent them in this Case and the option of bringing an arbitration or lawsuit in the Insured's name only.

Proration and Joint Representation Agreement Between the Client

In consideration of Insurer advancing the Litigation Expenses of this Case, Insured hereby waives any claim of priority (first dollar out) to any recovery or the Total Recovery obtained in this Case by way of settlement or judgment. In other words, any recovery that Insured is entitled to receive from any person or entity for any losses or damages Insured has arising out of this Case will be received on a pro rata basis.

For purposes of this proration agreement only, Insured and Insurer agree that the Insured's recoverable economic damages to replace the Wartsila engine and install a 4.375 MW engine, which replacement is in conformity with the Zachry Engineering Report dated February 13, 2015 for the purchase and installation of a nominal 4.375 MW natural gas reciprocating combustion engine (hereinafter the "Replacement Engine") shall be \$7,501,760.00 less the \$6,250,000 insurer paid Raton.

The insured and Insurer do not know what the final cost will be to install the Replacement Engine. They anticipate that the cost will exceed 7.5 million and may go as high as \$8 million or more. They recognize that trying to estimate at this time what the final installation cost will be is very difficult given cost overruns, unforeseen circumstances and general increases in construction costs.

However, both the Insured and the Insurer want to pursue their claims against Wartsila Finland OY for its negligence, breach of contract and mistakes concerning the failure of the original engine. To avoid any delay in pursuing Wartsila Finland OY they have agreed for purposes of this Agreement on a pro rata percentage that they will use regardless of what the final cost of installing the Replacement Engine actually turns out to be. Accordingly, solely for purposes of determining this pro rata percentage, the amount to be used for the total cost to install the Replacement Engine when calculating the pro rata percentage will be \$7,501,760 (12% above the current estimate of \$6,698,000). In other words, even if it ultimately costs less

than \$7,501,760.00 to install the Wartsila Engine, the number that will be used to calculate the pro rata percentages is \$7,501,760.

Pursuant to the Parties' agreement, the amount of pro rata percentage that the Insured will receive is sixteen point six eight six percent (16.686%) (\$7,501,760 less \$6,250,000 for an uninsured loss of \$1,251,760).

Litigation Expenses

The Lawyers have and will incur "Litigation Expenses" for this Case. Insurer has and will pay for Litigation Expenses. It is difficult for the Lawyers to predict accurately the amount and type of the Litigation Expenses they will have to incur. The Litigation Expenses may include, but are not limited to: court filings; subpoenas; mediations; court reporters; videographers; mock trials; travel and lodging; experts; couriers; phone; postage and exhibits for mediations or trial. Insurer will decide what Litigation Expenses should be incurred by the Lawyers.

In the event that Insured incurs Litigation Expenses for travel, food and lodging, at the Lawyers or the Insurer's request, Insured will notify the Lawyers in advance of incurring any such Litigation Expenses. The Lawyers will approve in advance all such reasonable expenses and Insurer will promptly reimburse Insured for said expenses upon receipt of documentation for same.

The Lawyers will not charge Insured or Insurer for computer database research done by the Lawyers, and charge only .09¢ (nine cents) for photocopies made at the Lawyers' office and no charges for any faxes (including long distance faxes). If large copy jobs are sent to outside copying services, or hotel fax charges are incurred, the actual copying, courier or other costs will be a Litigation Expense.

If there is no recovery, Insurer shall pay for all of the Litigation Expenses and Insured will pay nothing for the Litigation Expenses. Litigation Expenses shall include, but are not limited to any fees, taxable court costs, or arbitration costs awarded against Insured in the event there is no recovery.

If there is a recovery, after attorneys' fees are paid, Insurer will first receive reimbursement for the Litigation Expenses it advanced. Insured will never pay any of the Litigation Expenses out of Insured's own pocket. Insured's only obligation as to Litigation Expenses is to agree that Insurer will be first reimbursed Litigation Expenses before Insured and Insurer split the remaining proceeds.

Distribution of Any Recovery

If a recovery is obtained, by settlement or judgment, the Lawyers will receive their contingency fee out of the Total Recovery. Then, Insurer shall receive reimbursement for the Litigation Expenses Insurer advanced. After those deductions, then Insurer and Insured will receive their pro rata percentages of the balance that remains after these deductions.

By way of example only, assume that the Parties' claims against the responsible party(ies) for the damages suffered by Insured and Insurer is settled for \$1 million. Assume that the Insurer incurred \$100,000 in Litigation Expenses. After deducting attorneys' fees of 33 1/3%, then \$666,666 would be left. \$100,000 of that amount would be paid to Insurer to reimburse it for Litigation Expenses it advanced on behalf of Insurer and Insured. The remaining \$566,666 would be split between Insurer and Insured in pro rata proportion (83.314% and 16.686%) Thus, in this hypothetical example, Insurer would net \$472,112.11 and Insured would net \$94,553.89.

Right to Control the Litigation and Settlement

For the consideration contained herein, Insured waives Insured's right to control the handling and prosecution of all aspects of this Case, a lawsuit, or arbitration including, but not limited to: the timing and amount of settlement demands; what causes of action to plead; which witnesses will testify at trial, trial tactics and strategy; and whether to accept a settlement offer or go to trial. Insurer shall make all such decisions.

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Integration: What This Agreement Covers

This Agreement supersedes any other agreement between the Parties, whether verbal or written regarding the subject matter herein. Should any term, condition or provision of this Agreement be held to be invalid, the remainder of this Agreement shall remain in full force and effect and the Parties want the remaining provisions enforced to the fullest extent permitted by law. This Agreement may be changed only by a separate written agreement signed by the Parties before a notary public.

This Agreement will be effective upon the signature of all Parties and can be executed in multiple identical counterparts and via fax and e-mail. Any copy and an executed identical counterpart are as effective as an original signed by all Parties.

The undersigned have read all of this Agreement and agree to all of its terms.

Dated: _____

HARTFORD STEAMBOILER
INSPECTION & INSURANCE
COMPANY

By: _____
Darren Sinofsky

Its: _____

Dated: _____

CITY OF RATON

By: _____

(Printed name of signatory)

Its: _____

Dated: _____

RATON PUBLIC SERVICE COMPANY

By: _____

(Printed name of signatory)

Its: _____