

International Municipal Lawyers Association, Inc.

Model Outside Counsel Agreement

USING THIS AGREEMENT AND GUIDELINES

A. This Agreement and Guidelines are intended to be used together and to provide a guide for a local government as client and a prospective law firm to negotiate an agreement to provide legal services to the government for matters outside the context of providing services as the Chief Legal Officer. IMLA has model agreements for in-house chief legal officers and for firms serving as the government's chief legal officer. This Model is not intended to be legal advice and should only be used in conjunction with a review by counsel who can represent the government. It is modelled on agreements used by cities and their outside counsel. This Agreement uses the terms "City", "County", etc., but can be used by a City, County, Village, Town, Township or a Special District.

B. Because this Agreement is a legal document and creates certain rights and responsibilities, both Attorney and Client are cautioned to seek independent counsel when negotiating its terms and to refer to state law to ensure the Agreement does not conflict with state law.

C. Attorney and Client are also cautioned that this Agreement may have tax consequences for each and that their review of its terms should include a review of its tax consequences. The question of whether a contractual arrangement creates an employer-employee relationship or that of an independent contractor is complex and caution and clarity in drafting can help to assure the desired relationship is created. This Model attempts to create the relationship of independent contractor. Other legal issues may arise from the relationship as can various liabilities and immunities. Clients, Firms and Attorneys are cautioned to determine how the peculiar liabilities and immunities of public officials whether sued individually or in their official capacities might be affected by this Agreement.

D. In some sections IMLA has offered suggested options from which the Attorney and Client may choose. This does not mean that other options are not available or that there are not other options to consider in those paragraphs where IMLA has not suggested an option.

E. When hiring outside counsel, the City should consider that an attorney is required to hold a state issued license to perform the duties of the profession and is required by ethical rules to maintain independence of legal judgment in the performance of services. Attorneys can be foreclosed by ethical limitations from representing others and in handling the work of some clients based on their obligations under this Agreement; these limitations may require consideration in the structure of the Agreement.

F. The drafters considered including indemnification language but concluded that state law variations would likely make the task far too complicated for a national model. Because the Agreement requires the Firm to carry insurance and because requirements to indemnify clients are not the norm in an attorney client relationship, a requirement for the Firm to indemnify the City ~~ought~~ should not ~~to~~ be

sought without some overarching basis. Similarly, requirements for the City to indemnify the Firm are not the norm. However, indemnification may be required under some state and local laws where officers and employees of the municipality are protected by indemnification statutes or otherwise accorded immunity. A state statute that requires a City to indemnify an officer of the City, should not alter the independent contractor relationship; however, IMLA notes that the same reasoning does not follow where the indemnification runs to an employee. Similarly, actions taken on behalf of the City while acting as an independent contractor may find protection under principles of immunity accorded similarly situated employees of a local government. *Filarsky v. Delia*, 566 US _, 132 S. Ct. 1657, 182 L. Ed. 2d 662 (2012). Parties to this Agreement should also consider if an indemnification clause is warranted under the laws of the State.

G. There are likely to be state and local contract requirements that might apply to this Agreement. The parties must look to state law or local law to determine what provisions must be included. They may include, local, minority business or small business preferences; anti-discrimination provisions, non-appropriation clauses among many others. Parties using this Model should ensure that state and local procurement laws are followed and mandatory provisions included.

H. Because state and local laws will vary what may be included in the terms of the Agreement, IMLA offers some options under the Guidelines and suggests that the users of this Model consider whether state or local law require modification in all cases and if so, then the user should modify the Guidelines. If changes are contemplated in a specific Agreement and not contemplated as a general modification, then the user may wish to modify the terms of the Letter Agreement and not the Guidelines. IMLA includes optional language for this purpose. Following this description of Using this Agreement and Guidelines is a checklist that the drafters believe include provisions that ought to be covered or considered in agreements with outside counsel. The decision to include or not to include the provisions should be a thoughtful one. The drafters may have overlooked a provision that a CITY/COUNTY should include and IMLA stresses that this document should not be used without consultation with an attorney licensed to practice law in the State and one who represents the CITY/COUNTY as THIS DOCUMENT IS NOT INTENDED TO BE LEGAL ADVICE and should not be used as such.

I. IMLA provides consulting services to cities and may be able to help a city determine when to use outside counsel or inside counsel. IMLA does not provide legal consultation and use of its consulting service is not a substitute for getting independent legal counsel.

IMLA wishes to thank its members for volunteering to take on the work to draft this document. The people who participated in this effort and to whom IMLA owes a great debt of gratitude are:

Marion Radson, Chair, City Attorney, Gainesville, FL (retired)
G. Foster Mills, Managing Attorney, Corporation Counsel's Office, City of New York (retired)
Susan H. Churuti, Bryant Miller Olive (retired)
Howard Friedman, General Counsel, New York City Schools
Thomas Carr, City Attorney, Boulder, Colorado

Checklist for Outside Counsel Agreement

[The following are topics that ought to be considered for inclusion in an agreement with outside counsel.]

Introduction

1. Issues related to the relationship itself
    a. Scope of Services
    b. Retention (create attorney-client relationship)
    c. Independent contractor status
    d. Engagement letter
    e. Applicable guidelines
    f. Cooperation with in-house attorneys
    g. Designated in-house attorney
    h. Non-exclusive
    i. Term
    j. Termination
    i. Events upon Termination

2. Issues related to the outside firm
    a. Admission and good standing
    b. Compliance with all laws
    c. Treatment of employees in compliance with local, state and national laws
    d. Ethics
    e. Conflict of Interest

3. Issues related to how work is to be performed
    a. Use of In-house resources
    b. Communication with city or county employees
    c. Attorneys assigned by outside counsel
    d. Budget
    e. Contact with Media
    f. Settlement
        i. Offers
        ii. Negotiations
    g. Employment of experts and investigators

4. Issues related to documents
    a. Ownership
    b. Access
    c. Disposition at end of engagement
    d. Release to third-parties
    e. Confidentiality
    f. Copies to be provided

5. Financial

    a. Billing
        i. Invoicing
        ii. Payment
        iii. Electronic fund transfer
        iv. Not to exceed amount
        v. Notification of approach to not to exceed amount
        vi. Format

vii. Frequency

b. Expenses
   i. Travel
   ii. Lodging and meals
   iii. Copies
   iv. Messengers
   v. Telephone
   vi. Scanning
   vii. Non-reimbursable expenses
   viii. Responsibility for costs
   ix. Limitations

c. Fees
   i. Fees for attorneys and paralegals
   ii. Limitations
   iii. Internal conferences
   iv. Supervision and training
   v. Paralegal duties
   vi. File review
   vii. Status reports
   viii. Travel time
   ix. Fees for Legal research
   x. Prohibition on contingent fees for retained experts or other independent contractors

6. Issues related to the agreement
   a. No third party beneficiaries
   b. Severability
   c. Dispute resolution
   d. Notices
   e. Entire agreement
   f. Subject to appropriation
   g. Time is of the essence
   h. Authority of city or county to retain
   i. Confidentiality
   j. Assignment and subcontracting
   k. Amendment of agreement
   l. Law applicable to agreement
   m. Insurance
   i. Proof of insurance
   n. Indemnification – Although not included in the model, indemnification should be considered.

RETAINER AGREEMENT LEGAL SERVICES

THIS AGREEMENT ("Agreement") is made and entered into by and between the [City/County]---------- a [municipal corporation and political subdivision] of the State of ------("CITY/COUNTY"), and ---------- ("FIRM" or "SPECIAL COUNSEL").

RECTITALS

WHEREAS, The City/County Attorney is authorized to engage outside attorneys on behalf of the CITY/COUNTY to assist the City/County Attorney's Office in its representation of the CITY/COUNTY and its officers and employees; and

WHEREAS, CITY/COUNTY Attorney may seek to assign outside counsel to provide legal representation, support and resources, as well as specialized legal advice to the CITY/COUNTY; and

WHEREAS, SPECIAL COUNSEL is experienced in providing legal representation in the areas of the law deemed necessary by the City/County Attorney and has the necessary resources to do so.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. SCOPE OF SERVICE

[OPTIONAL PROVISION 1 – Where Firm hired to provide legal services that may include multiple assignments.]

A. The CITY/COUNTY hereby retains and employs SPECIAL COUNSEL to provide legal representation of the CITY/COUNTY, its duly authorized officers, employees, and volunteers, as the ATTORNEY's areas of concentration and experience may allow.
B. Before SPECIAL COUNSEL may engage in legal representation on behalf of the CITY/COUNTY on a new matter, SPECIAL COUNSEL shall send the CITY/COUNTY an engagement letter for each specific matter ("Matter Engagement Letter"). The Matter Engagement Letter shall specify a "not to exceed amount" for the Engagement and outline the specific scope of SPECIAL COUNSEL's representation of the CITY/COUNTY on the new matter and any specialized rates or fees needed for the matter not included in this Agreement. SPECIAL COUNSEL shall not engage in any new matter until the City Attorney signs the Matter Engagement Letter acknowledging the CITY/COUNTY's engagement of SPECIAL COUNSEL on the new matter.

[OPTIONAL PROVISION 2 – SINGLE ASSIGNMENT]

A. The CITY/COUNTY hereby retains and employs SPECIAL COUNSEL to provide legal representation of the CITY/COUNTY, its duly authorized officers, employees, and volunteers, as the ATTORNEY's areas of concentration and experience may allow [in the matter of {describe the matter} or regarding {describe the nature of the issue for which representation is being sought}].
B. SPECIAL COUNSEL will provide these Services in accordance with the City/COUNTY of -------- Legal Representation Guidelines, which are attached hereto and incorporated herein by this reference.

C. The Services provided pursuant to the Agreement are nonexclusive and the CITY/COUNTY is not limited by this Agreement from entering into other agreements for legal services with other attorneys, nor is the CITY/COUNTY required by this Agreement to assign any specific legal matters or volume of legal matters to SPECIAL COUNSEL.

SECTION 2. TERM

CITY/COUNTY agrees to retain SPECIAL COUNSEL from the date of this Agreement through--------(insert date). SPECIAL COUNSEL will undertake to represent the CITY/COUNTY to the conclusion of each matter assigned, even if the conclusion extends beyond the term of this Agreement.

Within sixty (60) days prior to the expiration of this Agreement, the CITY/COUNTY may exercise the option to renew this Agreement for up to three (3) additional, one-year periods, unless this Agreement is earlier terminated under the provisions hereof. Any renewals of this Agreement will be executed by the CITY/COUNTY Attorney.

The CITY/COUNTY has the right to terminate this Agreement, in whole or in part, without penalty, by notifying SPECIAL COUNSEL in writing of such termination prior to the effective date of such termination. Such notification of termination shall state the effective date of termination. In the event of such termination, SPECIAL COUNSEL shall, unless otherwise mutually agreed upon in writing, cease all services immediately, except such services that are necessary to wind-up, in a cost-effective manner, all services being provided. Subject to Appropriation as described in Section 29 of this Agreement, CITY/COUNTY shall be liable for payments for all services performed under this Agreement to the effective date of termination, plus any necessary services to effectively wind-up.

SECTION 3. ATTORNEY FEES

The NOT TO EXCEED amount of this Contract is $____(insert amount). In no event may SPECIAL COUNSEL, earn or incur fees or expenses and charge them to CITY/COUNTY in excess of the NOT TO EXCEED amount of this Contract.

A. SPECIAL COUNSEL will provide the CITY/COUNTY with Services under this Agreement at the following rates and charges, unless amended by a CITY/COUNTY approved Matter Engagement Letter. Hours of service shall be billed based on increments of no less than one/tenth of an hour and shall represent actual time spent, rather than a standard charge for the activity performed.

A. *Hourly Rates*:	B. *Standard Charges*:
Regional Managing Partner:	$ xxxx per hour
Blended Rate for Partners and of-counsel:	$ xxxx per hour
Blended Rate for Associates:	$ xxxx per hour

Paralegals: $ xxxx per hour

[OPTIONAL PROVISION 1:

(a) A blended rate of $[insert hourly rate here] per hour of attorney time (recorded and billed in increments no greater than 0.10 hour segments);]

[OPTIONAL PROVISION 2:

(a) The attorneys named below will be compensated per hour of attorney time (recorded and billed in increments no greater than 0.10 hour segments) at the rates specified:

[insert attorney name and billing rate here]

(b)Firm paralegals or law clerks at the rate of $[insert minimum rate here] to $[insert maximum rate here] per hour (recorded and billed in increments no greater than 0.10 hour segments), dependent upon experience and expertise; Firm agrees to assign matters to paralegals and law clerks to achieve the most cost effective service in the City's best interest.

(c) Firm agrees not to bill for the services of more than one attorney (or paralegal/law clerk or combination of attorney, paralegal/law clerk) who attends the same meeting, conference or event unless approved in advance. Firm agrees to assign work to attorneys, paralegals and law clerks in a manner to achieve the most cost effective benefit to City as is in the City's best interest.

[OPTIONAL PROVISION 3

A flat amount of *********. This amount is inclusive of all customary expenses related to the performance of the services, with the exception of all travel-related and messenger or delivery services, which shall be invoiced separately. The NOT TO EXCEED AMOUNT for this Engagement is $***** and FIRM understands that under no circumstances may it earn or incur fees or expenses and charge them to CITY/COUNTY in excess of the NOT TO EXCEED AMOUNT of this Contract. [Fees and expenses of others (such as printers, consultants, appraisers, and other counsel) generally will not be paid by us, but will be billed to you and in combination with all charges made for this representation cannot exceed the NOT TO EXCEED AMOUNT.]

C. *Travel Rate*. [OPTIONAL PROVISION 1: CITY/COUNTY will not pay for travel time; however, SPECIAL COUNSEL may bill for work actually performed while traveling.]

[OPTIONAL PROVISION 2: The hourly rate for travel time for each person traveling for CITY/COUNTY matters if authorized under this Agreement will be listed below. A person's travel rate may not exceed half of that person's hourly rate listed above. If a travel rate(s) is not listed below, SPECIAL

COUNSEL may not charge CITY/COUNTY for time spent traveling on CITY/COUNTY matters. Travel Rate is: -----]

Comment: CITY/COUNTY and SPECIAL COUNSEL may agree to a different payment method or a combination of payment methods based on the tasks to be provided that can be task based fees, flat fees or other innovative fee arrangements, including contingent fees that offer the CITY/COUNTY the greatest benefit.

SECTION 4. TERMINATION

This Agreement may be terminated by either party upon written notice. Notice of termination of this Agreement on behalf of the CITY/COUNTY may be given at any time at the discretion of the CITY/COUNTY Attorney.

In the event of termination, SPECIAL COUNSEL shall be paid compensation for Services performed and properly billed pursuant to the terms of this Agreement to the effective termination date but not in excess of the NOT TO EXCEED AMOUNT.

The CITY/COUNTY reasonably believes that funds can be obtained to make all payments according to the approved budget during the remainder of the fiscal year. If, however, the CITY/COUNTY does not allocate funds to continue the legal representation, this Agreement shall automatically terminate when appropriated funds expire as provided in the Legal Representation Guidelines.

SECTION 5. ASSIGNMENT AND SUBCONTRACTING

SPECIAL COUNSEL shall not assign, transfer or delegate any rights, obligations or duties under this Agreement, nor shall SPECIAL COUNSEL subcontract the provision of Services under this Agreement, without prior written consent of the CITY/COUNTY ATTORNEY.

SECTION 6. AMENDMENT AND MODIFICATION

No provision of this Agreement will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by the CITY/COUNTY Attorney and the authorized agents of SPECIAL COUNSEL.

SECTION 7. APPLICABLE LAW

This Agreement shall be governed by and interpreted according to the laws of the State of

--------.

SECTION 8. CONFLICTS

SPECIAL COUNSEL warrants that it has used due diligence to determine if it has a conflict in representing CITY/COUNTY and that it does not except as specifically detailed in a separate document provided to CITY/COUNTY Attorney and that by executing this Agreement SPECIAL

COUNSEL and CITY/COUNTY have agreed that the representation contemplated in this Agreement has been approved by CITY/COUNTY and by those clients of SPECIAL COUNSEL who must also consent to the representation due to the conflict. During the term of this Agreement, SPECIAL COUNSEL may not represent a client whose position may be adverse to the CITY/COUNTY without obtaining the CITY/COUNTY 'S prior written consent to the adverse representation in accordance with -------- [***insert here the appropriate citations such as:*** *Rules of Professional Conduct 1.7 and 1.8 and following termination of this Agreement must abide by Rule of Professional Conduct 1.9.]*

SECTION 9. INDEPENDENT CONTRACTOR

SPECIAL COUNSEL is an independent contractor and not an employee of the CITY/COUNTY. No permitted or required approval by the CITY/COUNTY of documents or Services of SPECIAL COUNSEL shall be construed as making the CITY/COUNTY responsible for the manner in which SPECIAL COUNSEL performs Services or for any negligence, errors or omissions of SPECIAL COUNSEL. Such approvals are intended only to give the CITY/COUNTY the right to satisfy itself with the quality of the service performed by SPECIAL COUNSEL and SPECIAL COUNSEL specifically retains its independence of professional judgment.

SECTION 10. EXCLUSIVE BENEFIT OF THE PARTIES/NO THIRD PARTY RIGHTS

Except as specifically provided in this section, this Agreement is not intended to create any rights, benefits, powers or interests in any third party and this Agreement is entered into for the exclusive benefit of the CITY/COUNTY and SPECIAL COUNSEL.

SECTION 11. SEVERABILITY

If any portion of this Agreement is found to be invalid, the remainder of the Agreement remains in effect.

SECTION 12. PROHIBITION AGAINST CONTINGENT FEES

SPECIAL COUNSEL warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the CITY/COUNTY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage brokerage or contingent fee.

SECTION 13. NOTICES

Any notice required or permitted to be given under this Agreement shall be deemed to have been given when received by the party to whom it is directed by personal service, hand delivery or United States Mail at the following addresses:

TO CITY/COUNTY :

TO SPECIAL COUNSEL:

Either party may, at any time and from time to time, change its representative or address by written notice to the other.

SECTION 14. ENTIRE AGREEMENT

This Agreement and the accompanying Legal Representation Guidelines constitute the entire agreement between the parties and may only be modified, supplemented or amended by a written agreement signed by both parties. In the event of any inconsistency between the terms of this Agreement and the Legal Representation Guidelines, the terms of this Agreement shall prevail; if there is any inconsistency between oral direction and the Legal Representation Guidelines, the Legal Representation Guidelines shall prevail.

SECTION 15. TIME OF ESSENCE

Time is of the essence as to each and every provision of this Agreement.

SECTION 16. AUTHORITY

SPECIAL COUNSEL represents and warrants that the person signing this Agreement on behalf of the SPECIAL COUNSEL has all requisite authority to bind the SPECIAL COUNSEL to the terms and obligations of this Agreement.

IN WITNESS WHEREOF, the CITY/COUNTY has made and executed this Agreement and caused the seal of said CITY/COUNTY to be affixed hereto, and the SPECIAL COUNSEL has hereinto set its hand this day and year below.

COMMENT: Approval of a contract will be regulated by local law and thus the proper signatories may be different from what is shown below.

CITY/COUNTY COUNCIL APPROVAL:

Date

ATTEST:

CITY/COUNTY Manager CITY/COUNTY Clerk

APPROVED AS TO CONTENT APPROVED AS TO FUNDING AND FORM

CITY/COUNTY Attorney CAO Review

Chief Financial Officer

SPECIAL COUNSEL (State of incorporation/formation), (corporation, limited liability company, etc)

Date

- FORM ENGAGEMENT LETTER [Only Used for Multiple assignments]

[FIRM LETTERHEAD]

Re: Agreement for Legal Services -

Dear ******:

We are pleased that CITY/COUNTY has engaged ******* ("FIRM") to assist in the above-captioned matter, and we look forward to the opportunity to work with you. To ensure we proceed on a common understanding of our relationship, this letter confirms the terms of our retention WHICH WE UNDERSTAND MUST ALSO CONFORM TO THE CITY/COUNTY GUIDELINES FOR LEGAL SERVICES attached hereto as Exhibit A. Please sign and return this letter to us at your earliest convenience.

1. Client. Our client in this matter will be CITY/COUNTY. Unless we expressly agree in writing otherwise, we shall not be deemed to represent any independent agencies of government having status as political corporations and which are not units of CITY/COUNTY, or any individual officers or employees or other associated entities. The attorney-client privilege is solely between the Firm and CITY/COUNTY.

2. Scope of Representation. We will be engaged to represent CITY/COUNTY solely in ****. Specifically, you are engaging FIRM to ******. Our acceptance of this engagement does not involve an undertaking to represent you or your interests more broadly in this matter, or in any other matter. You may limit or expand the scope of our representation from time to time, provided that we must agree to any substantial expansion. Unless we mutually agree in writing, any such expanded representation will be governed by the terms and conditions of this agreement.

3. Staffing. ******* will serve as lead attorney and will be assisted by other attorneys and legal assistants at the Firm in a manner appropriate to the particular aspect of the matter and as provided in the Guidelines for Legal Services.

4. Fees and Charges. Our fees for this matter will be:

[OPTIONAL PROVISION:

A flat amount of *********. This amount is inclusive of all customary expenses related to the performance of the services, with the exception of all travel-related and messenger or delivery services,

which shall be invoiced separately. [Fees and expenses of others (such as printers, consultants, appraisers, and other counsel) generally will not be paid by us, but will be billed to you.]

Although we may attempt to estimate our fees to assist you in your planning if requested, such estimates are subject to change and are not binding unless otherwise expressly and unequivocally stated in writing.

***Comment**: The CITY/COUNTY ATTORNEY should discuss and review the proposed fees and plan for the assignment and negotiate the fees and plan for the assignment prior to acceptance of the engagement.*

5. Billing. Billing must conform to the Legal Representation Guidelines. Payment is due in full within 30 days of the date of our statement. If any statement remains unpaid for more than 90 days, we may cease performing services for you and withdraw from the representation in accordance with applicable rules of professional conduct. Unless you instruct us otherwise, we will e-mail our monthly statements to you via PDF.

6. Conflicts and Confidentiality. FIRM represents many companies, organizations, governments, and individuals in a wide range of matters. Furthermore, it is in the nature of FIRMs work that we represent positions for other clients with which you may disagree. To prevent any future misunderstanding and to preserve the Firm's ability to represent you and our other clients, both present and future, our representation of you is based upon the following mutual understanding:

a. We will not represent another client in a matter that is the same as or substantially related to this one and in which that client is adverse to you.

b. In the absence of a conflict described in subparagraph 6(a), the Resolution of any conflict will be in accord with the Guidelines for Legal Services.

c. If you withdraw or modify your agreement with these conflict terms in any material respect, you agree that at such time we shall have the right to withdraw from our representation of you pursuant to this agreement.

d. The advance consent described above does not permit unauthorized disclosure or use of client confidences. We will preserve your confidences consistent with applicable rules of professional conduct. Without your consent, we will not disclose to any other client (or anyone else) any confidential information we receive from you. We will ensure that, except for the attorneys and legal assistants approved to work on this matter, none of your confidential

information is provided to the attorneys or legal assistants working on other matters for other clients. Both you and we will keep confidential our representation unless disclosure is consented to or otherwise required by applicable law or court rules.

e. Following termination, information you have supplied to the Firm that is retained by the Firm will be kept confidential in accordance with applicable rules of professional conduct. At your request, papers and property belonging to you will be returned promptly upon receipt of payment for outstanding fees and costs. We will retain our own files, including lawyer work product pertaining to this matter. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us in accord with the Legal Representation Guidelines.

7. Client Responsibilities. You agree to cooperate fully with the Firm and to provide promptly all information known or available to you relevant to our representation. You also agree to pay our statements of fees and expenses in accordance with paragraph 5 above.

8. Termination. Either of us may terminate this representation at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. This representation will end at the earliest of (1) your termination of the representation; (2) our withdrawal; or (3) our sending to you our final statement for services rendered in this matter. We normally do not withdraw from a representation unless the client misrepresents or fails to disclose material facts, fails to pay fees or expenses, or unless other just cause exists. If permission for withdrawal is required by a court, we shall promptly apply for such permission, and our termination shall coincide with the court order for withdrawal. If our services are terminated for any reason, such termination shall be effective only to terminate our service in the future and all other terms of the representation shall survive such termination including the duties described in the Legal Representation Guidelines.

After completion or termination, changes may occur in the applicable laws or regulations that could have an impact on your future rights and liabilities. Unless you engage us after the completion of this matter to provide additional advice on issues arising from the matter, the Firm has no continuing obligation to advise you with respect to future legal developments. Furthermore, the Firm will have no obligation to monitor or inform you of any renewal or notice dates or similar deadlines that may arise in connection with the matter for which we were retained.

In the event that we terminate the representation, and you engage successor counsel to represent you, we agree to take such steps as are reasonably required to protect your interests under applicable ethical rules.

9. No Guarantee of Success. Nothing in this agreement or any statements by our staff or attorneys constitutes a promise or guarantee. Any comments about the outcome of the matter are simply expressions of judgment that are not binding on us.

10. Consent to Use of Information. We sometimes prepare and publish materials that describe our law practice and give examples of matters we handle for our clients. You agree that, once our representation of you in this matter becomes public through a court filing or otherwise, our materials may identify it as a client and may contain factual summaries of this matter, as long as we do not disclose your confidences or secrets as defined by applicable ethical rules.

11. Miscellaneous. This Engagement Letter sets forth our entire agreement for rendering professional services. It supersedes any prior agreement with you with respect to our engagement to provide professional services to you. It can be amended or modified only by written agreement, and not orally or by course of conduct. The terms and conditions herein will govern our relationship with you upon our retention even if you do not sign and return a copy of the attached cover letter. Neither party may bind the other party by unilateral submission of additional or different terms and conditions. If you wish to modify any terms or conditions, please advise us immediately to allow us to resolve any differences and proceed with a clear, consistent, and mutual understanding of our relationship.

This retainer may be signed in one or more counterparts and binds each Party on whose behalf the retainer is countersigned below. If any provision of this agreement or the application thereof is held invalid or unenforceable, the invalidity or unenforceability shall not affect other provisions or applications of this agreement and, to this end, the provisions of this agreement are declared to be severable.

We are not advising you with respect to this retainer because we would have a conflict of interest in doing so. If you wish to receive such advice, you should consult with independent counsel.

Please confirm your acceptance of these terms by signing below and returning it to us at your earliest convenience. If you have any questions, please do not hesitate to call. Again, we are pleased to have this opportunity to serve you.

Very truly yours,

Member of FIRM

AGREED TO AND ACCEPTED:

AUTHORIZED CITY/COUNTY OFFICIAL

EXHIBIT A

LEGAL REPRESENTATION GUIDELINES

These Legal Representation Guidelines ("Guidelines") set forth the procedures that govern CITY/COUNTY Attorney's Office's ("CITY/COUNTY ") relationship with its contracted counsel ("SPECIAL COUNSEL") and CITY/COUNTY 's expectations when retaining SPECIAL COUNSEL to represent CITY/COUNTY .

CITY/COUNTY regards its relationship with each retained attorney and FIRM as personal and contractual. Adherence to these Guidelines is a condition of maintaining that relationship. CITY/COUNTY expects SPECIAL COUNSEL to maintain the highest ethical standards and to comply with all applicable laws, rules, and regulations governing ethical conduct. Nothing contained in these Guidelines is intended to, nor shall it, restrict SPECIAL COUNSEL's exercise of professional judgment or infringe upon the attorney-client relationship in any manner.

CITY/COUNTY expects SPECIAL COUNSEL, and any para-professionals working on CITY/COUNTY's claims, to read and comply with these Guidelines. These Guidelines supersede any previously provided Guidelines.

1. Introduction. These Guidelines apply to all SPECIAL COUNSEL ("Outside Counsel" or "Counsel") retained by the --------CITY/COUNTY to provide legal services in connection with a matter. Outside Counsel shall become familiar with and adhere to these Guidelines in providing legal services in connection with the matter. The City/County wishes to remind Outside Counsel that the City/County expects Counsel to provide high quality legal services at reasonable cost, to maintain transparency in billing, and to be mindful of the responsibility to conserve public resources without compromising the quality of the services provided. SPECIAL COUNSEL will work in conjunction with and at the direction of the CITY/COUNTY Attorney in the performance of Services hereunder.

SPECIAL COUNSEL will observe and abide by the terms and conditions of all applicable law, regulations, Rules of Professional Conduct, ordinances and rules of the United States, of the State of --------, or any political subdivision thereof, or of any duly constituted public authority or agency.

In the event of conflict between these Guidelines and the provisions or terms of the Retainer Agreement Legal Services and the Engagement Letter, the provisions and terms that offer the City/County the most favorable result in the sole opinion of the City/County Attorney whose decision is final shall govern and prevail.

The Services provided pursuant to the Agreement are nonexclusive and the CITY/COUNTY is not limited by this Agreement from entering into other agreements for legal services with other attorneys, nor is the CITY/COUNTY required by this Agreement to assign any specific legal matters or volume of legal matters to SPECIAL COUNSEL.

2. Designated Contact.

a. CITY/COUNTY Attorney may designate a Department attorney (the "Designated Contact") to work with Outside Counsel; if no attorney is designated then the CITY/COUNTY Attorney shall be Designated Contact for purposes of these Guidelines. SPECIAL COUNSEL shall contact the Designated Contact for any approvals required by these Guidelines of litigation events or expenses. SPECIAL COUNSEL should consult frequently with the Designated Contact regarding matters SPECIAL COUNSEL is handling so that the Department will have current information about the status of the matters and can have input on such questions as whether a particular assignment is necessary, a particular deposition is worthwhile, or a particular document production can be completed more economically in-house. As appropriate, SPECIAL COUNSEL will schedule periodic meetings and conference calls with the Department to discuss developments and strategy in the matter.
b. SPECIAL COUNSEL shall contact the Designated Contact at the beginning of the engagement to set up an initial meeting at which relevant names and phone numbers, to the extent then known, can be given to SPECIAL COUNSEL, and arrangements can be made for the provision of documentary evidence, including electronic discovery, to SPECIAL COUNSEL. Whether such a meeting is actually held will be at the discretion of the Designated Contact.
c. SPECIAL COUNSEL should use its professional judgment in deciding whether to obtain the prior approval of the Designated Contact for a litigation event, where such approval is not specifically required by these Guidelines. Litigation Events that are specified in a plan of litigation and/or a budget that was previously submitted to and approved by the Designated Contact will ordinarily not need to be re-submitted for approval at the time the litigation event is about to transpire.
d. All bills submitted by SPECIAL COUNSEL will be reviewed by and are subject to the approval of the Designated Contact.

3. Notifications. SPECIAL COUNSEL shall promptly advise the Department in writing of any significant developments in a matter. Unless a court appearance, settlement discussion or other important meeting is scheduled less than 72 hours in advance, SPECIAL COUNSEL shall notify the Department of such events at least 72 hours in advance (or within such other time as the Designated Contact may agree to) to enable SPECIAL COUNSEL and other representatives of the CITY/COUNTY to attend or participate. In the event that a court appearance, settlement discussion or other important meeting is scheduled less than 72 hours in advance, SPECIAL COUNSEL shall notify the Department at as early a time as is practicable.

4. Settlement Offers or Negotiations. SPECIAL COUNSEL shall immediately convey all offers of settlement to the Designated Contact who will consult with the appropriate persons in the Law Department and the CITY/COUNTY regarding any such offers. SPECIAL COUNSEL may not enter into any settlement negotiations or settlements without the prior approval of the Designated Contact. The Department will make all determinations concerning such offers of settlement. SPECIAL

COUNSEL shall consult with the Designated Contact and obtain the Designated Contact's prior written approval for any proposed resolution of the matter SPECIAL COUNSEL is handling. SPECIAL COUNSEL will not affect a final compromise of any matter, nor assert any conflict waivers without the prior written approval of the CITY/COUNTY ATTORNEY.

5. Copies of Documents. SPECIAL COUNSEL shall provide the Designated Contact with copies of drafts of all significant pleadings in any litigation or other documents that SPECIAL COUNSEL intends to provide to, or file with, a court or a government agency that may potentially affect the disposition of a matter, for the Department's review and approval, at least 72 hours before they are filed or submitted (or such other time as the Designated Contact may agree to). SPECIAL COUNSEL shall also provide the Designated Contact with final documents and/or imaged copies of as-filed documents, as the Designated Contact may request, as soon as is reasonably practicable. (If no instructions are received from the Designated Contact, SPECIAL COUNSEL shall, at a minimum, provide copies of as-filed documents.)

6. Copies of documents in electronic form. In addition to the requirements of Paragraph 5 above, SPECIAL COUNSEL shall provide the Information Technology Department with electronic copies, in native file format, of all final memoranda, briefs and other work product produced in the case/matter approximately every six months during the course of the engagement, and at the end of the engagement. SPECIAL COUNSEL shall provide each case/matter's electronic documents in a format agreed upon in writing and if not agreed upon on read-only DVDs or CDs with labeling, directory structure, file names and other descriptive details, and with an encryption method, all as the Department may reasonably require.

7. Ownership and Access. All materials developed, prepared, kept or acquired during the performance of Services under this Agreement, including without limitation, all finished or unfinished documents, research, pleadings, memoranda, briefs, data, studies, surveys, drawings, manuals, maps, models, photographs, and reports (hereinafter collectively called "Documents") shall be available to the CITY/COUNTY ATTORNEY upon request. Under the Rules of Professional Conduct, Rule 1.6 [**insert here the applicable cite that is comparable to A.B.A. Rule 1.6.**] SPECIAL COUNSEL'S duty of confidentiality prohibits SPECIAL COUNSEL from disclosing any information gained in the representation without the CITY/COUNTY ATTORNEY's written permission. Documents shall be the exclusive property of the CITY/COUNTY and all such materials shall be retained by SPECIAL COUNSEL for a minimum of seven (7) years from the date any and all appeal rights expire or conclusion of the matter. At the end of this retention term, the CITY/COUNTY ATTORNEY shall be notified and given sixty (60) days to reclaim Documents or each file prior to its destruction by SPECIAL COUNSEL. At all times, CITY/COUNTY ATTORNEY shall have access to all Documents within 24 hours of a request for access.

8. Public Information. SPECIAL COUNSEL acknowledges that information created or exchanged in the course of representation of a governmental body may be subject to the State or Local laws regarding public records [insert citation here] and may be subject to required disclosure in a

publicly-accessible format pursuant to [insert citation here if applicable]. SPECIAL COUNSEL will exercise professional judgment and best efforts when creating documents or other media intended to be confidential or privileged attorney-client communications that may be subject to disclosure under the State or Local laws regarding public records (e.g. invoices where incidental notation may tend to reveal litigation strategies or privileged information). SPECIAL COUNSEL should mark confidential or privileged attorney-client communications as confidential. This paragraph shall not be interpreted to limit SPECIAL COUNSEL's duty to provide full disclosure to CITY/COUNTY and the CITY/COUNTY ATTORNEY as necessary in SPECIAL COUNSEL's judgment to represent CITY/COUNTY with due professional care or as required by applicable law or disciplinary rules.

9. Conflicts of Interest. The Rules of Professional Conduct and State and Local Laws may affect whether and under what limitations a public entity may allow a waiver of a conflict of interest in legal representation. To the extent that the Rules and Law in this jurisdiction allow a waiver of a conflict of interest, the waiver must conform to those requirements or the SPECIAL COUNSEL must forego representing any other party where a conflict exists between that party and the CITY/COUNTY. [OPTIONAL PROVISION: During the term of this Agreement, SPECIAL COUNSEL will be permitted to represent clients other than the CITY/COUNTY in matters involving the CITY/COUNTY , or being heard before CITY/COUNTY agencies, where such matters are not related to the subject matter of this agreement and where the CITY/COUNTY determines that the conflict of interest related to work being performed under this Agreement and the work to be performed for the other client or prospective client is not incompatible with the SPECIAL COUNSEL's representation of the CITY/COUNTY under this Agreement.] In light of this restriction, SPECIAL COUNSEL shall disclose to the CITY/COUNTY , as soon as is reasonably practicable, the identity of any client or prospective client the SPECIAL COUNSEL represents or proposes to represent in any matter involving the CITY/COUNTY , or being heard by any CITY/COUNTY agency, with a short description of the matter and the possible adverse consequences to the CITY/COUNTY of such representation. Thereafter, SPECIAL COUNSEL shall take one of the following actions:

(a) obtain the CITY/COUNTY 's consent, in writing, to waive the conflict. Where appropriate, in the discretion of the CITY/COUNTY , the CITY/COUNTY may require, as a condition of such consent, that SPECIAL COUNSEL implement and maintain, for the duration of the matter, effective screening procedures (an internal "firewall") to prevent the flow of information between the attorneys performing services under this Agreement and the attorneys representing the other client or prospective client, and any such firewall shall be subject to the CITY/COUNTY 's approval; or

(b) discontinue (or forego) its representation of the other client.

COMMENT: The applicable conflict of interest rules will vary with each jurisdiction and this paragraph should be reviewed carefully to conform with local law, practice and custom.

10. Contact with the Media. SPECIAL COUNSEL is not authorized to comment publicly on any CITY/COUNTY matters, to issue statements or press releases or to disclose to the media any facts involving or relating to the matter SPECIAL COUNSEL is handling without the prior approval of the Department. SPECIAL COUNSEL shall cooperate with the Department regarding requests for information and, if requested by the Department, assist in the preparation of documents relating to the matter. If SPECIAL COUNSEL receives any media inquiries, SPECIAL COUNSEL shall refer them to ***[insert appropriate contact here]*.**

11. Financial Records and Submission of a Budget. SPECIAL COUNSEL shall provide the Designated Contact with a budget, which will be reviewed by the Department. If SPECIAL COUNSEL is handling multiple matters, then SPECIAL COUNSEL must submit a budget for each. The budget shall conform to the NOT TO EXCEED provisions of the Agreement and include a good faith estimate of the cost of the services, including an identification of each of the various tasks SPECIAL COUNSEL expects to perform, the projected number of hours of attorney time and paralegal time (if any) estimated to be needed to complete each task, and the fees and costs anticipated to be associated with each task. If, during the course of the representation, it appears that SPECIAL COUNSEL may exceed the budget for a particular task by 10% or more, SPECIAL COUNSEL shall notify the Designated Contact in advance, provide a written explanation for the anticipated variance from the budget, and obtain the approval of the Designated Contact for any such variance. Where the Department deems the explanation to be inadequate, the Department may adjust the billing for the task so that it conforms to the budget. SPECIAL COUNSEL shall abide by the budget approved by the CITY/COUNTY for each of the matters it is assigned. SPECIAL COUNSEL shall report [***insert a time frame such as monthly]*** on the status of its approved budget. The CITY/COUNTY is not responsible for budget overruns unless they have been pre-approved in writing by the CITY/COUNTY Attorney.

SPECIAL COUNSEL shall maintain all books, documents, papers, accounting reports and other evidence relating to the Services, and shall permit the CITY/COUNTY ATTORNEY and its authorized representatives access to and the right to inspect all such books, documents, papers, accounting reports, and other evidence at all reasonable times during the Agreement period and for seven (7) years from the date of final payment.

12. Staffing.

a. Attorneys. SPECIAL COUNSEL and the Designated Contact will agree upon the specific attorney(s) who will have a lead role in the matter. SPECIAL COUNSEL may not substitute a different attorney for a lead role without the Department's prior approval in writing. SPECIAL COUNSEL shall submit a staffing profile that identifies the partners, associates and paralegals who will work on the matter. Changes in such staff are subject to the prior approval of the Designated Contact. The CITY/COUNTY reserves the right to request, and to object to, representation by specific attorneys within SPECIAL COUNSEL's firm. SPECIAL

COUNSEL should minimize staffing changes; however, it is recognized that staffing changes may be necessary from time to time. The Department will not pay for learning time associated with a change in personnel initiated by SPECIAL COUNSEL, except that, if the change in personnel was made at the request of the Designated Contact and not because of poor performance, inaccessibility or lack of cooperation by the original personnel, the Department will pay the reasonable costs associated with the review of the file by the new personnel.

b. In performing the services, SPECIAL COUNSEL shall select, for each task, an individual suitable for the task and the specific needs of the matter. Each such individual must have appropriate experience in the area in which he or she is performing services and hold all necessary licenses and admissions.
c. SPECIAL COUNSEL shall not:
    1. overstaff CITY/COUNTY matters;
    2. charge for any services that duplicate the effort of other assigned staff;
    3. charge for time of newly assigned lawyers, after a change in personnel, spent to become familiar with the matter, or time spent duplicating work performed by an attorney previously assigned to the matter except in the circumstances permitted in 10.a. above.
d. *Limitation on Hourly Billing for Multiple Attorneys*. The Department will pay for only one attorney to attend meetings, depositions, hearings, court conferences, and trials, unless expressly and clearly specified in SPECIAL COUNSEL's litigation plan, or unless otherwise approved in advance by the Designated Contact.
e. *Paralegals*. Some examples of the kinds of activities that generally should be performed by a paralegal, and not by an attorney, are:
    1. Ordering searches such as title or legal records searches;
    2. Ordering public records;
    3. Organizing and re-organizing files that involve case documents such as separating and cataloguing responses to requests for production of documents;
    4. Indexing file material, but only if a degree of professional judgment with respect to categorization is required;
    5. Preparing subpoenas or notices for deposition, entry of appearance, substitution of SPECIAL COUNSEL, requests to produce, jury trial demands, and other routine litigation documents;
    6. Summarizing answers to interrogatories;
    7. Preparing records requests and subpoenas;
    8. Summarizing employment and other records;
    9. Abstracting or digesting depositions; and
    10. Summarizing document production.

Unless approved in advance by Designated Contact, these activities must not be billed at and will not be payed at an attorney rate.

f. Experts and consultants. The selection and retention of experts, appraisers, consultants, and investigators shall be coordinated with and approved by the Designated Contact. SPECIAL COUNSEL shall itemize charges for any such services on its invoices.

13. Legal Research. The City/County will pay only for research reasonably necessary to complete the assignment. SPECIAL COUNSEL shall obtain prior approval from the Designated Contact before conducting a legal research assignment that is expected to exceed ten hours. SPECIAL COUNSEL shall consult, within its own firm and with the Designated Contact, prior to conducting legal research, to determine whether similar issues have been previously researched by the firm or by the City/County Attorney's Office. This is especially true of Notice of Claim, Statute of Limitations and Immunity issues, which are frequently litigated by the Department. SPECIAL COUNSEL is required to use such prior research where possible and applicable, and in such situations may charge the Department only for research connected with updating the previously researched issues. SPECIAL COUNSEL shall not initiate research before it is needed unless the Designated Contact expressly approves in advance.

14. Use of Certain City/County Resources. Where practicable, SPECIAL COUNSEL should use the City/County's resources for service of subpoenas unless the Designated Contact directs otherwise. SPECIAL COUNSEL and the Designated Contact are expected to determine if CITY/COUNTY has facilities or contracts for services needed in the course of the representation that may offer cost savings if used; for example, in-house printing, shipping contracts, court reporting services, messenger services, etc. and if available at a cost savings those services must be used unless Designated Contact directs otherwise. [OPTIONAL PROVISION: In matters where the CITY/COUNTY can use its law enforcement capability for investigation services and service of process SPECIAL COUNSEL must work with DESIGNATED CONTACT to determine if those services can be used, to what extent and coordinate their use where possible.]

15. Intra-Office Conferences. Intra-office conferences may be held for the purpose of discussing strategy and legal issues in the matter if included in the budget. All intra-office conferences for which the City/County will be billed may be held only as needed, and their length, as well as the number of persons attending, shall be kept to a minimum, included in the budget and approved in advance by Designated Contact. The City/County will not pay for conferences that are supervisorial or instructional (including conferences regarding case management). Also, SPECIAL COUNSEL may not bill for non-substantive internal conferences about CITY/COUNTY matters. Bills for intra-office conferences shall describe in detail the reason for the conference and the subject matter of the discussion. In the event an intra-office conference is essential to the representation and not approved in advance by Designated Counsel, the Designated Counsel must be notified as soon as practical following the conference as to the reason for the conference, the persons attending and

its outcome. The City/County may agree to pay for the conference if it concludes the reason for it and its cost is fully justified.

16. Reviewing Files. The City/County will not pay for the review of a file by an attorney who is merely supervising the work of another employee of the firm. Similarly, SPECIAL COUNSEL shall not bill the CITY/COUNTY for file review if an event does not precipitate such review (such as a telephone call or receipt of correspondence) or if the file review does not result in the creation of any tangible work product. The City/County considers such review to be part of SPECIAL COUNSEL's overhead and contained in SPECIAL COUNSEL's hourly rate structure. Any invoice that includes "file review" as an item shall provide details or that item will not be considered for payment by the Department.

17. Document or Deposition Summaries. SPECIAL COUNSEL may not charge for routinely digesting, abstracting, or summarizing documents and depositions, unless the Designated Contact has expressly and specifically agreed to such services and they have been included in the budget.

18. Written Status Reports. SPECIAL COUNSEL may not charge the City/County for any status report not included in the budget, unless the status report was requested by the Designated Contact and the Designated Contact has agreed that it is compensable.

19. Communications with CITY/COUNTY Employees Outside the City/County Attorney's Office. Before SPECIAL COUNSEL engages in any substantive communications with CITY/COUNTY officers or employees outside of the City/County Attorney's Office, SPECIAL COUNSEL shall inform the Designated Contact of its intention to have such a communication. (After the first instance, SPECIAL COUNSEL is not expected to inform the Designated Contact each and every time it has such a communication unless the Designated Contact has specifically asked SPECIAL COUNSEL to provide such information, or unless a communication is likely to go or has gone beyond the scope of the communications approved by the Designated Contact.)

20. Approaching the Not-to-Exceed Amount of the Contract. If SPECIAL COUNSEL's total billings are approaching (i.e., within 10% of) the "not-to-exceed amount" specified in the Engagement Letter, SPECIAL COUNSEL shall inform the Designated Contact in writing. The Department cannot pay any invoices that contain fees in excess of the not-to-exceed amount unless approved in writing by the City/County Attorney, sufficient funds exist in the budget appropriation for these services and the Engagement Letter is amended to increase the not-to-exceed amount by an amount sufficient to cover such fees and approved by the CITY/COUNTY Attorney.

21. Reimbursable Expenses. The Department will reimburse SPECIAL COUNSEL for actual, reasonable and necessary out-of-pocket expenses at cost without mark-up. All expenses shall be documented to the satisfaction of the City/County Attorney. Some examples of expenses for which the City/County may allow reimbursement, unless excluded by the terms of a particular contract, are the following:

a. Messenger Services.
b. Overnight or other expedited delivery services. The City/County does not expect all documents to be hand-delivered or sent by an overnight or express delivery service, but such services may be used where appropriate under the circumstances.
c. Photocopying and Bates Labeling. Photocopying and Bates labeling costs are reimbursable if performed for SPECIAL COUNSEL by an outside photocopying vendor. In such instances, reimbursement will be made at the lower of SPECIAL COUNSEL's actual cost or an amount not to exceed __ cents per page for routine copies, __ cents per page for color copies, and __ cents per page for routine Bates labeling. Whenever SPECIAL COUNSEL seeks reimbursement for copying or Bates labeling by an outside photocopying vendor, SPECIAL COUNSEL shall present to the City/County a copy of the photocopying vendor's invoice, which shall identify the type of copying (e.g., routine or color), the number of pages of each type copied, the number of pages Bates labeled, and the cost per page for each of these services. In-house copying costs are not reimbursable. When in-house Bates stamping is performed by an SPECIAL COUNSEL paralegal, SPECIAL COUNSEL will be reimbursed for the time spent Bates stamping at the paralegal hourly rate. Where productivity software is available to Bates Stamp documents and it is not used, SPECIAL COUNSEL must provide an explanation for not using the software and Department may adjust the amount of payment based on its estimate of the excess cost attributed to not using the productivity software.
d. Lodging and Meals. Lodging and meals are reimbursable only in the context of non-local travel under the contract, and then will be reimbursed at rates no greater than the lesser of the actual cost (without markup) or the maximum amount set forth in [*insert an appropriate standard either a citation to the local travel regulations or the Meals and Incidental Expense Breakdown of the Federal Travel Regulation in effect on the date the expense was incurred, published at:* *www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC* *]*. The City/County will not reimburse for meals in connection with local travel, meaning travel that is 100 miles or less from the offices of SPECIAL COUNSEL, unless the contract otherwise expressly provides. In no event will the Department pay any broker's fee or finder's fee associated with the rental of any hotel room, apartment or other lodging.
e. *Travel expenses such as Air Fare, Mileage, Rental Cars, and Taxi Fares.* SPECIAL COUNSEL shall bill air travel under the contract at no higher than the economy or coach fare. SPECIAL COUNSEL shall use its best efforts to make airline reservations in advance so as to take advantage of lower air fares. While on non-local travel under the contract, meaning travel that is more than 100 miles from SPECIAL COUNSEL's offices, SPECIAL COUNSEL may bill the City/County for reasonable mileage or for the cost of a rental car when necessary and when the cost of a rental car is less than other forms of ground transportation. If the cost of a rental car is less than the mileage expense, a rental car must be used. Under such circumstances, the Department will reimburse only at the rate for small, non-luxury vehicles. SPECIAL COUNSEL may seek reimbursement for taxi fares when on non-local

travel but any requests for reimbursement for taxi fares will be closely scrutinized for necessity and reasonableness.

OPTIONAL PROVISION:

[In some instances the Designated Contact may direct SPECIAL COUNSEL to coordinate travel through the --------.]

If SPECIAL COUNSEL's travel is both for the City/County and for another client or other activities of SPECIAL COUNSEL, SPECIAL COUNSEL may bill the City/County only for the City's/County's pro rata share of the travel expenses.

22. Travel Time. SPECIAL COUNSEL may bill the Department for travel time FOR NON-LOCAL TRAVEL WHEN APPROVED IN ADVANCE at the applicable hourly rate(s) as set forth elsewhere in the contract. If SPECIAL COUNSEL's travel is both for the City/County and for another client or other activities of SPECIAL COUNSEL, the City/County shall be billed only for the City/s/County's pro rata share of such travel time. Non-local travel shall be approved in advance by the Designated Contact. Consistent with Paragraph 10.d. of these Guidelines, the City/County will pay for travel by only one person, unless the Designated Contact gives advance approval for travel by more than one person. TRAVEL TIME FOR LOCAL TRAVEL IS NOT AUTHORIZED AND MAY NOT BE BILLED OR PAID.

23. Non-Reimbursable Expenses. The City/County will not pay for the following expenses, without limitation:

a. facsimile charges other than the long distance charges associated with the transmission.
b. local telephone expenses.
c. office supplies.
d. charges for business meals or refreshments, unless related to out-of-town travel and then only in accordance with these Guidelines.
e. in-house messenger services.
f. law books, journals, periodicals, subscriptions, etc.
g. computer consultants or technical support (This does not apply to the situation where SPECIAL COUNSEL has engaged a computer, information technology or litigation technology support consulting firm to provide expert consulting services in support of and necessary to the representation.).
h. mobile phone charges.
i. charges for Lexis, Westlaw, and other such research services.
j. charges associated with purchasing or renting software or equipment such as copiers, printers, computers, etc.

24. Non-Reimbursable Services. The City/County will not pay for the following services, without limitation:

a. secretarial, clerical or word processing services (whether ordinary, temporary or overtime).
b. administrative services (including file creation, file organization and maintenance or closing).
c. accounting, billing or book-keeping services. (This does not apply to the situation where SPECIAL COUNSEL has engaged an accountant or accounting firm as a subcontractor to provide expert consulting services in support of and necessary to the representation.)
d. the time of summer associates.
e. the time of law school graduates who are not admitted to the bar, except that, with the prior approval of the Designated Contact, such time may be billed at paralegal rates.
f. the time of librarians.
g. the time of computer or information technology support staff, or litigation technology support technicians. (This does not apply to the situation where SPECIAL COUNSEL has engaged a computer, information technology or litigation technology support consulting firm to provide expert consulting services in support of and necessary to the representation.)
h. charges associated with creating, maintaining or using an information or case management system.
i. the time spent reviewing, negotiating or executing the contract or any amendments to the contract.
j. charges associated with preparing bills or negotiating disputes over bills.
k. redrafting due to substandard work.
l. The supervision, education or training of attorneys, paralegals, or other staff of SPECIAL COUNSEL, including assigning such staff on a transient basis to a CITY/COUNTY matter.
m. office overhead costs of any kind.

25. Additional Invoicing and Billing Guidelines.

a. Individuals assigned to work on a matter are expected to perform at high levels of efficiency.
b. SPECIAL COUNSEL shall submit invoices for services rendered and/or for expense reimbursement, at a minimum, on a monthly basis. Invoices shall be submitted no more than 30 days after the end of the month in which the services reflected on the invoice were provided. It is especially important that any services rendered prior to [*insert date that is the end of fiscal year*] of a given year be submitted no later than 30 days after that date; in addition, SPECIAL COUNSEL must provide an estimate of this invoice (to include all work and expenses that have not been previously billed incurred during the CITY/COUNTY fiscal year) on or before the last day of the CITY/COUNTY fiscal year. The City/County prefers that invoices cover no more than one calendar month, so that no one invoice will show hours billed in different months. There may be situations in which this is not practical, such

as where the billing is task-based. If billing questions arise, they can be discussed with the Designated Contact.

c. Where SPECIAL COUNSEL has been assigned more than one case or matter under a particular contract, and each case or matter has a different case number associated with it, SPECIAL COUNSEL shall send a separate invoice for each such case or matter.

d. Each invoice shall contain the following information:
    1. The case number (i.e., number).
    2. The name or title of the matter.
    3. A unique invoice number for the particular invoice.
    4. SPECIAL COUNSEL's taxpayer identification number.
    5. The name of the Designated Contact.
    6. SPECIAL COUNSEL's billing contact.
    7. The time period covered by the invoice.
    8. The date of the invoice.
    9. For hourly rate billing:
        i. The specific dates of the services, the names of the persons who performed the services billed, their titles and, where applicable, their respective hourly rates.
        ii. A full description of each charge. [OPTIONAL PROVISION: Where attorney client privileged or other confidential matters are subject to disclosure under the Public Records Law, the description should be reasonably full and complete for the City/County to make an informed decision regarding compliance with these Guidelines and the payment of the charges without disclosing the privileged or confidential information, disclosing the litigation strategy, or harming the CITY/COUNTY position in the matter.] For charges requiring prior approval of the Designated Contact, note the date of the approval.
        iii. Time spent in .10 of an hour increments. (Not applicable in the case of task-based billing.)
    10. For task-based billing: A description of each completed task for which payment is sought, and the amount billed for the completion of the task.
    11. An itemized description of any disbursements and the charge for the disbursements.
    12. Time Keeper Summary.

e. SPECIAL COUNSEL shall avoid vague or unclear descriptions of services rendered. A vague or unclear invoice is one that does not provide clear and specific information on, in most instances, the nature of the task, the reason for the task, the individual who performed the task, or the amount of time that was spent on a task. SPECIAL COUNSEL's invoices shall provide clear, specific information relating to each task. For example, a bill for a telephone conversation shall specify the parties and the purpose of the call. A bill for the drafting or

review of any correspondence, pleadings, or other documents shall specifically describe the item in question. A bill for legal research time shall specify the issue(s) researched. [OPTIONAL PROVISION: Where attorney client privileged or other confidential matters are subject to disclosure under the Public Records Law, the description should be reasonably full and complete for the City/County to make an informed decision regarding compliance with these Guidelines and the payment of the charges without disclosing the privileged or confidential information, disclosing the litigation strategy, or harming the CITY/COUNTY position in the matter.] The City/County will seek clarification from SPECIAL COUNSEL where it finds a particular invoice to be vague or unclear and may reduce the amount of an invoice if a description satisfactory to the City/County is not provided.

f. Block billing is not permitted in hourly rate billing. Block billed entries are items that contain a single charge for more than one activity or more than one type of disbursement. Each item of work shall be associated with a discrete charge. An example of unacceptable block billing is the following:

> 05/12/10 Drafted letter to plaintiff's counsel; telephone conference call with plaintiff's counsel; discussed conference call with City/County Attorney's Office. 2 hours

g. Unless SPECIAL COUNSEL is otherwise instructed by the City/County Attorney's Office, SPECIAL COUNSEL's invoices shall be addressed and submitted to [***insert appropriate address for submitting bills and invoices****].*

End of Guidelines for SPECIAL COUNSEL