

## **A G R E E M E N T**

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and **NOSSAMAN LLP**, a California limited liability partnership, whose address is 777 South Figueroa Street, 34<sup>th</sup> Floor, Los Angeles, CA 90017 (“Special Counsel”), collectively “the Parties.”

### **WITNESSETH**

**WHEREAS**, the City desires to retain Special Counsel, pursuant to Section 6.1.2 of the Charter, to provide legal counsel and advice in matters concerning the City’s Department of Aviation; and

**WHEREAS**, the City issued a Request for Qualifications for law firms to provide special counsel representation related to the Great Hall Project at Denver International Airport, and Special Counsel’s Statement of Qualifications was selected; and

**WHEREAS**, Special Counsel is qualified and ready, willing, and able to perform the services as set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

**1. COORDINATION WITH DEPARTMENT OF LAW:** To provide the best possible legal representation and reduce costs and expenses, Special Counsel agrees whenever possible to utilize the staff of the City Attorney’s Office, together with other City personnel. As directed by the City Attorney, Special Counsel agrees to utilize and coordinate with any consultant retained by the City on matters related to Special Counsel’s work. Special Counsel acknowledges that one or more Assistant City Attorneys will be assigned to provide additional legal representation to the City on certain matters. Special Counsel shall submit to the City for approval: budgets, work plans and case plans in such form as may be required by the City’s Department of Law.

## **2. PROFESSIONAL SERVICES TO BE PERFORMED:**

- a. Special Counsel shall provide professional legal services, as provided by Subtitle B of the Denver City Charter at section 6.1.2 and in conformance with the Colorado Rules of Professional Conduct for the following services related to the Great Hall Project at Denver International Airport:
  - i. Advising the City on all aspects of the Development Agreement, including the structure of the agreement and the implications of various deal points and proposed terms;
  - ii. Assisting the City in negotiations with the private developer;
  - iii. Assuming primary drafting responsibility for the final, long-term Development Agreement; and
  - iv. Other services related to items i-iii, above, as mutually agreed upon by the Parties.
- b. Patrick D. Harder, Esq. shall serve as lead attorney for Special Counsel and shall direct the provision of services under this Agreement. Special Counsel shall supply the City with a copy of all pleadings, motions, briefs, interrogatories, requests for admissions, requests for production of documents, memoranda, orders and judgments of the court or arbitrator, contracts, agreements, memoranda, or other documents prepared by Special Counsel or any subcontractor hired by Special Counsel under this Agreement. Special Counsel agrees that the City Attorney, or the City Attorney's designated representative, shall have final authority over the use of all documents to be prepared in the above matters.

3. **TERM:** The Agreement will commence on the date set forth on the City signature page, and will expire on December 31, 2017 ("Term").

4. **PAYMENT OF FEES AND EXPENSES:** The City shall pay to Special Counsel, and Special Counsel agrees to accept as full payment of fees **not to exceed SIX HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$600,000.00)**, which shall be paid from time to time on the basis of monthly statements rendered by Special Counsel to the City as follows:

- a. **Fee Schedule:** Special Counsel shall be paid for actual time devoted to the work for the City, including meetings with City officials, review, preparation for and

appearance on behalf of the City in any grievance/arbitration hearings and/or litigation, conferences and telephone conferences, and all necessary travel time at the following rates:

Patrick D. Harder	\$670.00 per hour
Yukiko Kojima	\$580.00 per hour
Edmund V. Caplicki, III	\$595.00 per hour
Brandon J. Davis	\$525.00 per hour
Barney Allison	\$715.00 per hour
Shant Boyajin	\$305.00 per hour

Although the attorneys listed above will be the attorneys primarily responsible and active on these matters, it may be appropriate and efficient to involve other attorneys from Special Counsel, including but not limited to those identified in the Statement of Qualifications. Rates for such other attorneys shall be consistent with those set forth above.

**b. Expenses and Costs:** In addition, reimbursement of expenses shall be paid on the basis of monthly statements rendered by Special Counsel to the City, as follows:

Upon the prior approval of the City Attorney, the actual costs incurred by Special Counsel for documents sent to a printer or other outside contractor for reproduction, enlargement, reduction, display or mounting will be reimbursable. Other costs, including office personnel and overhead are not reimbursable and are presumed to be included in the hourly rates. Questions regarding the eligibility of an expense must be resolved in writing by the City prior to Special Counsel incurring the expense. Special Counsel shall be reimbursed at cost for travel expenses incurred by its attorneys and paralegals subject to the following limitations: All reimbursable travel **shall have prior written approval** by the City Attorney, and be related to and in furtherance of the purposes of Special Counsel's engagement. Vehicle rental costs are allowed when efficiency and economy are served, taking into consideration the elements of time and distance. Use of such vehicle for personal travel shall not be reimbursed. Reimbursement for meals is limited to the per diem allowed under the City's fiscal rules. Sleeping accommodation costs are limited to a reasonable amount, taking into account costs of alternate facilities in the location and other

relevant factors. Non-business and strictly personal expenses shall not be reimbursed, and hourly rates will not be paid for any period of time a trip is extended for convenience. Additional attorneys and paralegals employed by Special Counsel providing services under this Agreement may be billed at hourly rates pre-approved by the City.

**c. Maximum Contract Amount:**

(i) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation under this Agreement is **SIX HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$600,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Special Counsel beyond that specifically stated herein. Any services performed beyond those set forth in this Agreement are performed at Special Counsel's risk and without authorization under the Agreement.

(ii) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**5. STATEMENT OF SERVICES RENDERED:** The Special Counsel shall submit to the City a monthly invoice describing all services rendered and costs incurred by Special Counsel under this Agreement for the period covered by said invoice in such format as designated by the City Attorney or his designated representative. Each such invoice shall contain at least the following information: the date and nature of the services rendered, the name and position of the provider of such service, the amount of time, in hours and tenths or fractions of hours, attributable to each such service, and the total number of hours billed to the City for the period covered by the invoice. All invoices shall reference the Contract Control number of this Agreement as designated below on the City's signature page (the "Contract Control Number"). The City reserves the right to require such additional documentation as it deems appropriate to support the monthly invoice of Special Counsel. Any questions regarding the eligibility of an expense must be resolved in writing by the City prior to the incurrence of such expense by Special Counsel. A partner of the Special Counsel shall verify the monthly invoice.

Invoices are confidential attorney-client privileged documents and shall remain as such until and unless otherwise directed by the City Attorney. The City shall use its best efforts to pay invoices within thirty (30) days of receipt.

The Special Counsel shall attach to all invoices and billings provided hereunder a completed copy of the Invoice Review document, a blank copy of which is attached as **Appendix 1** and incorporated by reference. The City reserves the right to require such additional documentation as it deems appropriate to support the monthly invoice of Special Counsel.

**6. STATUS OF SPECIAL COUNSEL:** The status of the Special Counsel under this Agreement shall be that of licensed attorneys at law, providing professional legal services to the City under this Agreement, and neither Special Counsel nor its agents or personnel shall be considered employees of the City for any purpose whatsoever.

**7. TERMINATION:** The City may terminate this Agreement at any time, with or without cause. Termination shall be subject to Court consent, if such consent is required. If the Special Counsel's services are terminated, it shall be paid only for that portion of services satisfactorily completed in accordance with this Agreement at the time of notice of such action.

**8. EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Special Counsel, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

**9. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Special Counsel. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

**10. INSURANCE:**

**a. General Conditions:** Special Counsel agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Special Counsel shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any

warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the Contract Control Number. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Special Counsel shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s Contract Control Number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Special Counsel. Special Counsel shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Special Counsel. The Special Counsel shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**b. Proof of Insurance – Workers’ Compensation, Commercial General Liability, and Professional Liability:** Special Counsel shall provide a copy of this Agreement to its insurance agent or broker. Special Counsel may not commence services or work relating to the Agreement prior to placement of coverage. Special Counsel certifies that the certificate of insurance attached as **Exhibit A**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement with the exception of the Personal Automobile insurance requirement. Acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Special Counsel’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**c. Waiver of Subrogation:** For all coverages, Special Counsel’s insurer shall waive subrogation rights against the City.

**d. Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Special Counsel. Special Counsel shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Special Counsel agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**e. Workers' Compensation/Employer's Liability Insurance:** Special Counsel shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Special Counsel expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Special Counsel's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Special Counsel executes this Agreement.

**f. Commercial General Liability:** Special Counsel shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**i. Professional Liability:** Special Counsel shall maintain professional liability limits of \$5,000,000.00 per claim and \$5,000,000.00 aggregate policy limit.

**j. Additional Provisions:**

- (i) For Commercial General Liability, the policies must provide the following:
  - A. That this Agreement is an Insured Contract under the policy;
  - B. Defense costs are in excess of policy limits;
  - C. A provision that coverage is primary and non-contributory with other coverage or self- insurance maintained by the City.
- (ii) For claims-made coverage:

- A. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- B. Special Counsel shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits.

(iii) At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Special Counsel will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

#### **11. DEFENSE AND INDEMNIFICATION**

a. Special Counsel agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to negligence in the performance of the work under this Agreement (“Claims”), unless such Claims shall have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any negligent acts or omissions of Special Counsel or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Special Counsel’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Special Counsel’s duty to defend and indemnify City shall arise even if City is the only party sued by Claimant and/or Claimant alleges that City’s negligence or willful misconduct was the sole cause of Claimant’s damages.

c. Special Counsel will defend any and all Claims brought or threatened against City, and will pay on behalf of City, any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen



or limit the liability of the Special Counsel under the terms of this indemnification obligation. The Special Counsel shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**12. COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

**13. TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance § 20-107, *et seq.*, of the Denver Revised Municipal Code (D.R.M.C.). The Special Counsel shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

**14. ASSIGNMENT; SUBCONTRACTING:** Except as specifically authorized hereunder, the Special Counsel shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the City Attorney's prior written consent. Except as specifically authorized hereunder, any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The City Attorney has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement on account of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Special Counsel shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

**15. INUREMENT:** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns, provided assignments are consented to in accordance with the terms of the Agreement.

**16. NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person

or entity. Any person or entity other than the City or the Special Counsel receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**17. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Special Counsel lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

**18. SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

**19. CONFLICT OF INTEREST:**

**a.** No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. Special Counsel shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

**b.** Special Counsel acknowledges that it and its attorneys are bound by the Colorado Rules of Professional Conduct applicable to Colorado attorneys, including without limitation Rule 1.7, which addresses a lawyer's engagement under circumstances involving a conflict of interest. Special Counsel shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Special Counsel represents that it has disclosed any and all current or potential conflicts of interest, which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Special Counsel by placing the Special Counsel's own interests, or the interests of any party with whom the Special Counsel has a professional relationship or contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Special Counsel written notice describing the conflict.

**20. NOTICES:** Notices concerning termination of the Agreement, alleged or actual violations of the terms of the Agreement, and matters of similar importance must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or

mailed via United States mail, postage prepaid, if to Special Counsel at the address first above written, and if to the City at:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

With a copy to:

Daniel S. Reimer  
Assistant General Counsel  
Denver City Attorney's Office  
Airport Legal Services Section  
8500 Peña Blvd., #9810  
Denver, CO 80249

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**21. FEDERAL PROVISIONS:** This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future contracts between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the City's Municipal Airport System. The provisions of the attached Federal Appendix A are incorporated herein by reference.

**22. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

**a.** This Agreement is subject to D.R.M.C. Division 5 of Article IV of Chapter 20, and any amendments (the "Certification Ordinance").

**b.** The Special Counsel certifies that:

**(i)** At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(ii) It will participate in the E-Verify Program, as defined in § 8 17.5- 101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Special Counsel also agrees and represents that:

(i) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(ii) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Special Counsel that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(iii) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E- Verify Program.

(iv) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Special Counsel to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(v) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Special Counsel will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5- 102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. § 20-90.3.

d. The Special Counsel is liable for any violations as provided in the Certification Ordinance. If Special Counsel violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Special Counsel shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Special Counsel from submitting bids or proposals for future contracts with the City.

23. **DISPUTES:** All disputes between the City and Special Counsel arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), et seq. For the purposes of that administrative procedure, the City official rendering a final determination shall be the City Attorney.

24. **GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Denver Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

25. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Special Counsel may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Special Counsel shall insert the foregoing provision in all subcontracts.

26. **COMPLIANCE WITH ALL LAWS:** Special Counsel shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

27. **LEGAL AUTHORITY:** Special Counsel represents and warrants that it possesses

the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Special Counsel represents and warrants that he has been fully authorized by Special Counsel to execute the Agreement on behalf of Special Counsel and to validly and legally bind Special Counsel to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Special Counsel or the person signing the Agreement to enter into the Agreement.

**28. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

**29. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

**30. INTELLECTUAL PROPERTY RIGHTS:** The City and Special Counsel intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Special Counsel and any subcontractor hereunder and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Special Counsel shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Special Counsel and any subcontractor hereunder (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

**31. SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement

and will continue to be enforceable. Without limiting the generality of this provision, the Special Counsel's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**32. ADVERTISING AND PUBLIC DISCLOSURE:** Special Counsel shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Special Counsel's advertising or public relations materials without first obtaining the written approval of the City Attorney. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Special Counsel shall notify the City Attorney in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**33. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS; COUNTERPARTS OF THE AGREEMENT:** Special Counsel consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original. The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

**34. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**35. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in

a written amendment to the Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments will be, binding upon the parties and their successors and assigns.

**36. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Special Counsel shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs.

**[Signatures appear on the following pages.]**

ATTACHMENTS:

Appendix A & E: STANDARD FEDERAL ASSURANCES

EXHIBIT A CERTIFICATE OF INSURANCE

EXHIBIT B: LAW DEPARTMENT SPECIAL COUNSEL POLICY AND PROCEDURE;  
OUTSIDE COUNSEL/PROFESSIONAL SERVICES INVOICE REVIEW; TRANSACTION  
BUDGET AND WORK PLAN



Contract Control Number: PLANE-201629808-00

Contractor Name: NOSSAMAN LLP

By:  \_\_\_\_\_

Name: PATRICK HARDER  
(please print)

Title: PARTNER  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



## APPENDIX A

### COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below the term "Contractor" shall mean and include Special Counsel, and the term "sponsor" shall mean the "City."

During the term of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations.** The Contractor will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The Contractor will provide all information and reports required by the Acts, Regulations, or directives issued pursuant thereto and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will impose such Contract sanctions as it or the FAA may determine to be appropriate including, but not limited to:

- a. Withholding of payments to the Contractor under this Agreement until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX E

### TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term "Contractor" will mean and include Concessionaire and the term "sponsor" will mean City.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits' discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601 ), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973, (29 U.S. C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination

on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S. C. 1681 et seq).

**EXHIBIT A**  
**Certificate of Insurance**

**CITY AND COUNTY OF DENVER  
INSURANCE REQUIREMENTS FOR THE DEPARTMENT OF AVIATION**

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Certificate Holder Information:

CITY AND COUNTY OF DENVER  
Attn: Risk Management, Suite 8810  
Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard  
Denver CO 80249

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**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201629808 – Great Hall Special Counsel**

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**I. MANDATORY COVERAGE**

**Colorado Workers’ Compensation and Employer Liability**

**Minimum Limits of Liability (In Thousands)**   \$100, \$500, \$100

1. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor’s officers or employees who may be eligible under any statute or law to reject Workers’ Compensation Insurance shall effect such rejection during any part of the term of this Agreement. Any such rejections previously effected, must have been revoked as of the date Contractor executes this Agreement.
2. If the contractor/consultant is a sole proprietor, Workers’ Compensation is waived per State of Colorado law.

**Business Automobile Liability**

**Minimum Limits of Liability (In Thousands):**

Combined Single Limit   \$1,000

The policy must provide the following:

1. Coverage applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
2. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy.

**II. ADDITIONAL COVERAGE**

**Professional Liability (Errors and Omissions)**

**Minimum Limits of Liability (In Thousands)**

Per Claim   \$1,000  
Aggregate   \$1,000

The policy must provide the following:

1. Policies written on a claims-made basis must remain in force for three years extended reporting period in accordance with CRS 13-80-104.
2. If the coverage is written on a claims-made basis the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.

### **III. ADDITIONAL CONDITIONS**

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein:

1. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
2. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
3. For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
4. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
5. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better.
6. For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
7. No changes, modifications or interlineations on this document shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

### **NOTICE OF CANCELLATION**

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.



## APPENDIX 2 LAW DEPARTMENT SPECIAL COUNSEL POLICY AND PROCEDURE

The City Attorney periodically uses non-city employee attorneys in meeting the responsibilities to advise and represent the City and its officers and employees. Generally, these complementing lawyers are used where staff lacks expertise, time or consistency of clients' interest.

This Policy sets forth billing and case management procedures for law firms ("Special Counsel") retained by the City through its Department of Law as required by City Charter. The City enters into separate contracts which describe the matters to be handled and the details of their administration. This Policy will not be incorporated thereto by reference and applies to both litigation and transactional matters and to all legal services rendered.

For all matters referred to Special Counsel, there will be a supervising Assistant City Attorney ("Supervising Attorney") who shall be directly responsible to the City Attorney for all of the Special Counsel's activities, billings and payments. In all matters, at a minimum, a strategic plan for the matter, including the assignment of individual tasks to either Special Counsel or an Assistant City Attorney, shall be developed by Special Counsel and the Supervising Attorney. Cost-effective Special Counsel management is achieved by understanding the complexities of the matter early, evaluating the economic consequences and defining the level of service required and how much it is worth to the City. In developing a strategic plan for handling disputes, alternative dispute resolution is encouraged, whenever practical, to minimize legal costs.

The policy addresses Special Counsel:

Conflicts of Interest and Business Ethics;

Equal Opportunity Responsibilities;

Budgeting;

Coordination with the Supervising Attorney;

Staffing;

Use of Consultants and Experts;

Billing;

Fees;

Billable Time;

Disbursements and Reimbursable Costs;

Alternative Billing Arrangements;

Reviews; and

Privilege

### CONFLICTS OF INTEREST AND BUSINESS ETHICS

Special Counsel should conduct a thorough conflict of interest review prior to performing legal services for the City to ensure that, to the best of its knowledge, no conflict exists between its

representation of the City and any interests of its firm (including member attorneys) or of any of its firm's clients. Any possible conflict of interest that is identified should be discussed with the Supervising Attorney at the outset. The City Attorney will be reasonable in responding to conflict situations and requests for waivers. If a conflict later discovered, Special Counsel should immediately upon discovery so notify the Supervising Attorney.

## EQUAL OPPORTUNITY

We encourage our outside law firms to seek and recruit qualified minorities and women, and to utilize such individuals in providing our legal services. In addition, we welcome the opportunity to work with minority and women-owned firms.

## BUDGETING

Budgeting is an effective device for communicating to Special Counsel the City's goals in a particular matter and how the City values the matter for purposes of allocating resources. Budgeting helps project not only legal fees, but other costs as well, such as the time executives and other employees may have to spend in meetings or discovery. It also avoids surprises and disagreements about fees.

If legal fees and expenses for a particular matter are anticipated to be less than \$60,000 or in the case of a contract for ongoing general advice that is not set up as a separate matter by the City Attorney, Special Counsel shall provide to the Supervising Attorney a written estimate of the time expected to be expended and the fees and expenses to be incurred.

If it appears likely that legal fees and expenses for a matter will exceed \$60,000, Special Counsel shall submit to the Supervising Attorney for approval a Budget and Work Plan. In the case of litigation, the format attached as Appendix A shall be used, and in the case of a transactional matter, the format attached as Appendix B shall be used.

The Budget and Work Plan shall identify work to be performed by phases and tasks within each phase. Within each phase, each professional/paraprofessional to be involved shall be identified, along with the billing rate of each and the amount of time the work is expected to take. When this Budget and Work Plan is authorized, work within the Plan

may be performed without specific approvals from the Supervising Attorney, but any work not contemplated by the Plan must be specifically approved.

The Budget and Work Plan shall be updated quarterly, without any reminder. Firms must notify the Supervising Attorney promptly if it becomes apparent that the original budget is likely to be exceeded. Unless prior written approval has been obtained from the Supervising Attorney, fees or expenses incurred in excess of the approved quarterly budget will not be paid. Budget increases will not be approved as a matter of course unless there is an agreed upon revision to the Work Plan.

#### COORDINATION WITH SUPERVISING ATTORNEY

Regardless of whether a Budget and Work Plan is required, a Case Plan for all litigation shall be prepared by Special Counsel and submitted to the Supervising Attorney for review and comment. The Case Plan will set forth the major steps to be taken to pursue or defend the case. It will be written narrative incorporating the facts, legal theories, legal procedures including applicable dates, probabilities of success and the probable timetable to resolution. As necessary during the development of the case, Special Counsel shall supplement or amend the Case Plan outline.

All significant research projects should be discussed in advance with the Supervising Attorney to determine the need for such research and whether the same topic has already been researched. Similarly, Special Counsel shall not engage in any non-routine motions practice without first obtaining the approval of the Supervising Attorney. All non-routine pleadings, motions and other pages prepared by Special Counsel shall be submitted to the Supervising Attorney in draft for review and comment before service upon other parties and filing with the court. No appeals shall be taken without City Attorney approval. In transactional matters, all draft agreements shall be reviewed by the Supervising Attorney before distribution to other parties, or City agencies, unless otherwise agreed by the Supervising Attorney.

Special Counsel shall review discovery requests from other parties prior to sending them to the Supervising Attorney or other City personnel and identify objectionable discovery requests at the outset, so that time and effort is not wasted addressing discovery requests that do not require a response. Deposition summaries shall not be prepared as a matter of routine without first discussing such action with the Supervising Attorney.

All inquiries from the news media should be forwarded to the Supervising Attorney responsible for the matter for coordination.

#### STAFFING

The City Attorney usually selects a particular attorney in a firm to represent the City because of such attorney's expertise and because we have confidence in that lawyer's ability and judgment. Consequently that attorney should be personally in charge of any matter being handled for the City

from beginning to end, including the billing. Regardless of whether the case requires a Budget and Work Plan in accordance with the standards specified above, prior to commencing work Special Counsel shall discuss with the Supervising Attorney the names of the people from the firm who will be assigned to the case, their respective experience, billing rates and anticipated involvement. While we expect experienced attorneys to perform those tasks that require their level of skill and ability, we expect that legal expenses will be minimized by relying on a junior attorney or paraprofessional for less demanding tasks. Duplication of efforts and the resultant inefficiencies can sometimes be avoided by a few hours of the more experienced attorney's direct effort.

Special Counsel will avoid overstaffing, shifting and rotating personnel assigned to a matter and inappropriately staffing a matter with underqualified or overqualified individuals. Accordingly, without the Supervising Attorney's prior approval, no more than one attorney should attend meetings, depositions and hearings. No more than two attorneys should attend trials and major hearings. It is not appropriate to pay legal fees for the training of Special Counsel's personnel or replacement for staffing changes.

If it becomes necessary to substitute an attorney or paraprofessional or to add additional attorneys or paraprofessionals, Special Counsel shall consult with the Supervising Attorney before doing so. Changes in staffing of our matters are strongly discouraged, and the City Attorney expects the attorneys and paraprofessionals assigned to our matters to make personal commitment. Repeated changes in personnel are wasteful and indicate a lack of commitment.

#### USE OF CONSULTANT/EXPERTS

**Initial Contact with Consultants/Experts:** Written approval from the Supervising Attorney is required before contacting consultants or experts, with the exception of experts who are employees of the City, regarding provision of services in connection with a matter. However, in exceptional cases, oral authorization is sufficient which is to be promptly followed up with a confirming letter. In either event and unless advised to the contrary by the Supervising Attorney, Special Counsel shall provide a letter detailing the consultant's or expert's area of expertise, a description of the services to be provided, hourly rates, and an estimate of the total cost for the services, including out-of-pocket expenses.

**Retention of Consultants/Experts:** Consultants or experts will normally be retained and paid by Special Counsel, and Special Counsel will be responsible for the consultants or experts properly performing their work. Special Counsel should prepare a budget and, where the charges are expected to exceed \$10,000, a work plan for the work to be performed by the consultants or experts and should provide for quarterly updates to the Budget and Work Plan as

needed. Special Counsel will also be responsible for the consultant's and expert's budget performance and for ensuring they comply with the relevant portions of this Policy.

Billings of Consultants/Experts: Invoices of consultants and experts should be submitted in the same format as outlined in Appendix C, Model Billing Format, and be submitted with Special Counsel's invoice by the fifteenth day of the month following the month during which the services are rendered. As part of their submission, Special Counsel shall confirm that it has reviewed the consultant's or expert's invoice, including appropriate backup detail and have approved it for payment. Payments will be made to Special Counsel, and Special Counsel shall be responsible for paying the consultants or experts.

## BILLING

All invoices shall be on Appendix C-Model Billing Format (accompanied by an Appendix D-Outside Counsel Invoice Review form for invoices in excess of \$2,000) and shall be detailed to reflect the work performed by each attorney and each paraprofessional on each day; and all invoices should reflect the hours devoted to each task by each individual and the billing rate of each individual involved. The billing rates charged to the City shall be no greater than the lowest billing rates charged to any of Special Counsel's commercial or governmental clients at the time of the inception of its contract with the City. Professionals and paraprofessionals shall not bill in increments greater than 6 minutes. The City will not pay for attorneys' travel time, except time actually spent working while traveling. The City also will not pay for time spent preparing invoices, or responding to inquiries regarding invoices or for any other general administrative functions.

Invoices must group services and expenses related to a particular task rather than listing services in a chronological order. Because all invoices are approved by the Supervising Attorney, invoices should reflect the names of the person or persons in the City Attorney's Office for whom the work was performed; and if multiple matters are billed on an invoice, fees and expenses must be grouped by matter as identified by matter name. Each invoice should show the City contract control number. Failure to include this number is likely to result in substantial delay in payment. A cover page shall accompany each invoice and shall set forth the case budgets, billings to date and current invoice amount.

Unless specifically advised to the contrary, all invoices should be directed as follows:

Daniel S. Reimer, Assistant General Counsel  
Denver City Attorney's Office  
Airport Legal Services Section 8500 Peña Blvd., #9810  
Denver, CO 80249

Invoices cannot be processed for payment until a contract has been fully executed. In the event that an invoice amount will exceed the contract funding, no further payments will be processed until an amendment to the contract has been requested, prepared and fully executed.

## FEES

The hourly rates of Special Counsel attorneys and paralegals, as shown in the Special Counsel Contract, are the only personal service fees that should be reflected on an invoice, unless a special billing arrangement is provided for. The Supervising Attorney must be notified in advance if one of Special Counsel's attorneys will be moving to a higher rate bracket through seniority, and such a change should be preapproved or specifically provided for.

Many firms are seeking to streamline their operations by increasing the number of professional personnel assigned to each secretary. While we fully support efforts by our outside counsel to attain greater efficiencies, these changes may also be accompanied by a shift in administrative workload from the secretarial staff to either the paralegal staff or to a sub-paralegal level (often referred to as "Litigation Support").

Some incidental filing, photocopying and similar administrative support functions will necessarily be performed on occasion by attorneys and paralegals due to exigent or other special circumstances. However, routine or continuing administrative support services, such as file maintenance and word processing, should ordinarily be performed only by clerical, secretarial and similar support personnel and should not be charged to the City, as such services are considered to be included within Special Counsel's overhead.

## BILLABLE TIME

Time spent preparing Proposals, Case Evaluations, Work Plans, Budgets and Invoices: Unless agreed in writing that a different arrangement is appropriate, all time spent by Special Counsel preparing proposals to obtain work from the City, including time spent meeting with us to obtain background information or to discuss the proposal, will not be compensated time. The time spent preparing and updating case evaluation, work plans and budgets will be considered actual time worked unless such time is spent as part of preparing a proposal. Time spent preparing invoices, invoice summaries, and invoice review forms (Appendix D) should not be invoiced, except in unusual cases with specific preapproval from the Supervising Attorney.

Research Projects: All research projects requiring five hours or more shall be approved in advance by the Supervising Attorney, at which time agreement should be reached on whether a research memorandum is to be prepared. If a research memorandum is prepared, a copy shall be provided to the Law Department when completed.

Travel Time: Agreed-upon billing rates shall apply to time actually spent working on a City matter while in transit. Time that otherwise would have been spent in a normal home-to-office commute is not billable. Time away from home or the office, except for time traveling and actually spent performing legal services, will not be compensated.

Staffing Changes: As previously discussed, where staffing changes are made on a matter, no charge shall be paid for the time spent in familiarizing replacement personnel with the matter in the absence of an understanding to the contrary being reached in advance with the Supervising Attorney.

## DISBURSEMENTS

All disbursements should be reasonable and be invoiced at the actual net cost incurred and paid by Special Counsel. The reimbursable costs the City will pay are listed below. Unless prior approval is obtained from the Supervising Attorney, the City will not reimburse for expenses that are not listed. Each disbursement for which reimbursement is sought should be itemized on the invoice by referring to the appropriate category as illustrated in Appendix C, Model Billing Format. Supporting documentation should be provided for any single category of disbursement item which totals more than \$500. Such documentation should be redacted before submission to the City to exclude information related to Special Counsel's other clients. (On occasion, we have observed that some reimbursement documentation submitted to us has not been so redacted. The City, of course, would object to the submission of supporting documentation to Special Counsel's other clients that includes any information pertaining to the City).

### Reimbursable Costs:

Court Reporter Services and Docket/Filing Fees: Costs of Court reporter services, docket, filing, witness appearance and similar fees, and costs of serving subpoenas and other papers.

Consultants/Experts: Costs of consultants and expert witnesses if not retained and paid directly by the City are reimbursable costs. The consultant or expert's invoice should be attached to the firm's invoice.

Data Storage and Retrieval: In some large cases it may be necessary to implement/use special data storage and retrieval systems. Prior to developing or implementing a new system, the Supervising Attorney should determine if the City has data storage and retrieval capabilities that can handle these needs. If it is determined that a new system is needed, and with the prior approval of the Supervising Attorney the cost of the data storage and retrieval system and reasonable operation and maintenance

costs are allowable. An estimate of the expected operation and maintenance costs should be provided to the Supervising Attorney.

**Facsimile Costs:** Costs of outgoing facsimiles, not to exceed \$1.00 per fax (regardless of number of pages), plus actual, related long-distance telephone charges. The invoice should show the number of outgoing facsimiles transmitted. If the office is not equipped to identify long-distance charges for facsimiles, the Supervising Attorney will discuss a mutually acceptable alternative arrangement. The costs of incoming facsimiles should not be invoiced to the City.

**Legal Research Services:** Computer-assisted research shall be used with appropriate regard to its benefits and costs. For this reason, each use of services such as WestLaw and/or Lexis-Nexis on the City's behalf in excess of a total cost of \$500, shall be preauthorized by the Supervising Attorney. Special Counsel will retain a copy of the "search request" used in the computerized research, and Special Counsel will pass through to the City, on a pro rata basis, any discounts it receives from these providers and any chargers to the City for computer assisted research will not include any firm markup. The provider's invoice shall be attached to the firm's invoice in any month where the costs of computerassisted research exceed \$500. Costs of "Legislative Intent" research by an outside service may be included, but only if preapproved by the Supervising Attorney and if a copy of the research is provided to the Law Department.

**Long Distance Telephone Charges:** Costs of long distance telephone calls, reflecting all discounts available to Special Counsel.

**Meals:** Reasonable costs of meals when representation of the City requires attorneys or members of their support staff to travel away from their homes overnight; and for secretaries, clerks, and other support staff while working necessary overtime.

**Messenger Services and Overnight Couriers:** Costs of outside messenger services and overnight couriers or mail services (such as Federal Express), and costs of internal messenger services not to exceed the costs of comparable outside messenger services. Messenger services and overnight couriers should only be used when necessary to meet a deadline rather than on a routine basis.

**Overtime:** Costs attributed to overtime wages for those employees eligible for overtime pay, such as secretaries, word processors and other staff where such overtime work could not reasonably have been performed during regular hours and is not the result of work for other clients taking priority during normal working hours. Overtime wages do not include wages normally paid to regular night shift or overnight work processors, secretaries and similar support personnel. Work performed by such personnel should therefore not result in a charge to the City, unless the personnel



in question are themselves working overtime, such as on a weekend, in order to meet the City's needs. When the costs of overtime on a single project are expected to exceed \$500 in any month, such costs should be preapproved by the Supervising Attorney or the reasons for not obtaining such preapproval be explained on the invoice. The invoice should include a description of the tasks performed, the hours worked by each employee, and the overtime rate. City resources should be used as an alternative to incurring overtime costs where possible.

**Parking:** Actual cost of parking away from Special Counsel's office while performing services for the city. If not normally included in overhead, the City will also reimburse actual cost of validating a Special Counsel's overtime employee's or consultant's parking, but the City will not reimburse the cost of validating opposing counsel's or their client's parking.

**Postage Costs:** Postage costs, when incurred with the prior approval of the Supervising Attorney, for mailing to a large service list (more than 50 recipients). Special Counsel will typically mail pleadings and documents to large services lists. Ordinary postage costs for mailings of pleadings or other documents, other than to large service lists, will not be reimbursed.

**Reproduction Costs:** Costs of making photocopies directly related to work on a City matter may be charged at a rate not to exceed \$0.10 per page. Special Counsel should utilize City reproduction facilities whenever practicable for large jobs. When it would be cost effective to utilize the services of outside vendors for reproduction, such use should be preapproved by the Supervising Attorney and the associated costs separately itemized with a brief explanation of why it was necessary to have the work performed by an outside vendor. When the costs of photocopies on a single project are expected to exceed \$500 in any month, such costs should be preapproved by the Supervising Attorney or the reasons for not obtaining such preapproval explained on the invoice. The invoice should show the per page charge, the number of pages copied and a reference to any required preapproval.

**Travel Costs:** Travel-related expenses can be significant, and Special Counsel should be as cost sensitive as possible when making travel arrangements. There are significant opportunities to reduce outside counsel expenses related to travel by following many of the same guidelines utilized by the City. Accordingly, our policy on travel cost reimbursement to Special Counsel includes:

Special Counsel should book airline tickets as early as possible to take advantage of reduced airfares. While this is not always practical, in those instances when sufficient advance notice is given, Special Counsel should always advance book their reservations. In all instances where practical, Special Counsel should utilize the lowest available airfares.

Special Counsel may only claim reimbursement for domestic flights at the coach rate. Exceptions may be granted due to special circumstances (e.g., no coach seats were available at the time of ticketing), but the justification for such exceptions must be included in or accompany the invoice. Receipts alone will not be establish special circumstances.

A Saturday night stay-over can result in significantly less expensive airfare. Therefore, in instances

where a visit may be extended beyond the business week, the City would be willing to provide reimbursement of properly incurred additional meal and lodging expenses associated with the weekend stay-over provided that such additional expenses are more than offset by the reduced airfare.

Special Counsel should take advantage of special and nonrefundable fares whenever possible, when the date is definite.

Mileage or other costs for local travel to and from the City business offices are not recoverable unless preapproved by the Supervising Attorney.

Special Counsel should limit, whenever possible the number of attorneys traveling on a specific City matter. In many instances, adequate representation can be provided through the attendance of a single attorney at a meeting or hearing. Alternatives to travel such as videoconferencing and conference calls whenever practicable are encouraged.

The type of ground transportation used by Special Counsel should be cost-effective. The use of shuttles to and from airports, when possible, is generally more cost-effective than single-use taxicabs.

In order to permit confirmation of compliance with these guidelines, Special Counsel shall identify on their invoices the separate charges for transportation (air and ground), hotel accommodations and meals.

#### ALTERNATIVE BILLING ARRANGEMENTS

The City desires the best legal talent obtainable at the lowest possible price that nevertheless is fair to Special Counsel. With those objectives in mind, we may reduce the number of firms with which we work and will concentrate our matters handled by outside counsel with relatively few firms that produce the best legal work at the lowest cost. We welcome alternative billing arrangements, especially blended rates and fixed fee billing. We will track and compare what hourly fees would have been in order to help us evaluate the benefits of using such alternative fee arrangements.

Special Counsel is encouraged to propose alternative billing methods. The use of built-in incentives should be maximized in such proposals to create a shared economic interest in the outcome or a matter, which may provide an opportunity to earn a greater profit but at less cost to the City than if hourly billing were to be the sole source of compensation. Such billing methods include fixed fees for all or a discrete part of project, fixed fees plus a contingency, reduced hourly rates plus a contingency, blended hourly rates and volume discounts.

## REVIEWS

Review of Records: During the time legal services are being provided for any matter, and for three years thereafter, the Law Department will have the right of access, at all reasonable times, to all of the firm's or its subcontractor's accounts and records pertaining to a matter, including related invoices, necessary to verify that the services were performed and the fees and disbursements invoiced are reasonable. Such accounts and records will include work papers and related files, time reports and details or reimbursable expenses, including invoices for charges in excess of \$25.

Confidential or Proprietary Information: Neither Special Counsel nor its subcontractors will be asked to disclose any confidential or proprietary information including, but not limited to, other client information and information related to internal financial matters or affairs.

Costs Responsibility for Reviews: The City may photocopy any original account or record at its cost. The firm will be responsible for any costs it incurs in support of a review without reimbursement from the City.

## PRIVILEGE

Special Counsel is hired by the City through its Department of Law. As such, in most cases the City, not individual officers or employees of the City, is Special Counsel's client. The City maintains an attorney-client privilege with Special Counsel. Any actions which may affect this privilege should be discussed in advance with the Supervising Attorney to determine whether such actions should be taken.

Occasions will often arise in which Special Counsel will interact with various City officials and employees in connection with their representations of the City. Special Counsel should make it clear to City officials and employees that any information which is shared with Special Counsel may be used by the City even if it turns out to be detrimental to the official employee.

Under existing case law, the scope of the attorney-client privilege may not be the same for lawyers representing governmental entities as it is for lawyers representing other types of entities. See In re Grand Jury Subpoena Duces Tecum, 112 F.3d 910 (8th Cir. 1997), cert. denied 1997 LEXIS 3898 (June 23, 1997). Special Counsel should be familiar with this case law and should discuss matters relating to the existence and protection of the privilege with the Supervising Attorney as such matters arise.

**OUTSIDE COUNSEL/PROFESSIONAL SERVICES INVOICE REVIEW  
(TO BE COMPLETED BY OUTSIDE COUNSEL/PROFESSIONAL SERVICES PROVIDER AND  
ATTACHED TO ALL BILLINGS)**

Name of Firm:

Billing Attorney/Party: For Services Rendered In (Month):

Date Invoice sent: (1) City Attorney's Office Supervising Attorney/Manager:

Matter: Invoice No.

Contract No.: Contract Expiration Date:

**CONTRACT BILLING STATUS**

BILLINGS	FEES	DISBURSEMENTS/EXPENS	TOTAL


EFFECT OF CURRENT INVOICE ON CONTRACT CAP: Within 15% of Contract Cap? Yes No

Please provide the anticipated billings (for services) for the next two months. Amounts: \$ and \$ .

Have there been any developments that call for review of the project work plan or indicate the need to amend the contract cap amount? Yes (2) No \_\_\_\_\_

Have there been any changes in hourly rates or disbursement charge rates since the last invoice? Yes (2) No

Did you submit documentation for items over \$500?

Yes No (2) N/A Name of

Authorizing Party

Outside Photocopying \_\_\_\_\_

Computer Research (Lexis/Nexis/Westlaw) \_\_\_\_\_ Other (2)\_\_\_\_\_

Signature of Firm's Billing Attorney/Party: Date: \_\_\_\_\_

Section below to be completed by CAO Supervising Attorney/Manager

Date Form Reviewed	\$ OK to pay	Signature
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- (1) Please provide explanation if invoice is sent after 15th of month following services.
- (2) Please explain.

APPENDIX 1 MODEL BILL FORMAT  
COVER SHEET

(Supervising Attorney's Name) Date of Bill Denver City Attorney's Office Invoice No.  
1437 Bannock Street, Room 353 Tax I.D. No.  
Denver, Colorado 80202 City Contract Control No. Matter Name  
Month covered (beginning and end dates)City Attorney assigned:

Description of Services

Discounted

Regular Rate [where  
Rate Applicable] Hours Amount

Name of Lawyer \* \* xx xxx.xx

Paralegal \* \* xx xxx.xx

Total Fees xxx.xx

Disbursements

Secretarial Overtime xx.xx

Photocopying or Duplicating (xxx @ 10¢) xx.xx

Messenger Services or Delivery \*\* xx.xx

Telecopy or Fax transmission charges (xx @ \$1.00) xx.xx

Computerized Research xx.xx

Telephone xx.xx

Travel costs (including coach airfare)\*\* x,xxx.xx

Court reporter/consultant/expert witness\*\* x,xxx.xx

Total disbursements x,xxx.xx

Total services and disbursements\*\*\* x,xxx.xx

\* Please indicate the actual hourly rate being charged for each person, not a range. \* \*

If an outside disbursement in any category exceeds \$500.00, please attach a copy or copies of your receipts or bills from the provider. \* \* \* Please attach detailed supporting billing information

TRANSACTION BUDGET AND WORK PLAN

Privileged and Confidential - Completed form not to be distributed outside of Law Department

DATE: MATTER NAME: FIRM: CITY ATTORNEY FILE

FOR PERIOD NO: FIRM LEAD ATTORNEY:

PART I: ESTIMATED FEES - enter the total hours and dollars to be billed to each activity phase. Describe significant events/projects in each activity phase on reverse.

ACTIVITY PHASES	PARTNER Hours \$	ASSOCIA TE Hours	NON- ATTORNEY Hours	TOTAL \$	Hours
PHASE I - Review/Analysis					
PHASE II - Prep. Of Regulatory Apps/SEC Filings					
PHASE III - Drafting					
PHASE IV - Legal Research					
PHASE V - Negotiation					
PHASE VI - Advice/Consultation					
TOTALS					

PART 2: ESTIMATED DISBURSEMENTS

TOTAL \$

PART 3: ESTIMATED EXPERT/CONSULTANT/OTHER SERVICES (to be paid directly by Firm)

Experts/Con		sultants	\$
Other Outside Services	\$		
TOTAL			\$



PROJECT DESCRIPTION (identify activity category)	ESTIMATE HOURS
\$	


**PART 2: ESTIMATED DISBURSEMENTS - DESCRIPTION**

DISBURSEMENT TYPE	PURPOSE	ESTIMATED AMOUNT
TOTAL		

**PART 3: ESTIMATED EXPERT/CONSULTANT/OTHER OUTSIDE SERVICES -**

NAME	EXPERTISE AND PURPOSE	ESTIMATED AMOUNT