

# CITY COUNCIL COMMUNICATION



**MEETING DATE:** September 10, 2024

**ITEM NUMBER:** 9.{{item.number}}

**SECOND READING:**

{{customfields.ResoOrdNumber}}

**TYPE OF ITEM:** Consent

**PRESENTED BY:**

Eugene Mei, City Attorney's Office, Eugene.Mei@longmontcolorado.gov

## **SUBJECT/AGENDA TITLE:**

A Resolution Of The Longmont City Council Approving The Agreement Between The City And Kutak Rock LLP, For Construction Law And Construction Defect Litigation Special Counsel Services

## **EXECUTIVE SUMMARY:**

The City of Longmont solicited proposals via a Request for Proposal (RFP) for construction law and construction defect litigation special counsel services. The City received one proposal which was evaluated by a team of three evaluators based on the following criteria: capability, value/cost of efforts, and flexibility/understanding of requirements. Due to a lack of submittals and price, the City issued a non-award for the RFP.

In order to gather more responses, the City subsequently issued a Request for Quotes (RFQ), and sent the RFQ to several law firms specializing in construction law and construction defect litigation. The City received three proposals. Based on the above criteria and after a thorough review by the evaluation team, we recommend that the special counsel contract be awarded to Kutak Rock LLP. It is the determination of the evaluation team that Kutak Rock LLP can provide the requested services at the greatest benefit to the City of Longmont.

City Charter Section 8.3 provides that City Council, on its own motion or upon request of the City Attorney, may employ special counsel to serve under the direction of the City Attorney.

## **COUNCIL OPTIONS:**

1. Enter into a Special Counsel contract with Kutak Rock LLP
2. Do not enter into a Special Counsel contract with Kutak Rock LLP

## **RECOMMENDED OPTIONS:**

Enter into a Special Counsel contract with Kutak Rock LLP

## **FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:**

Contract services shall be paid based on payment and fee schedule outlined in the Special Counsel contract. The City Attorney's Office budget has \$62,500 in ongoing funding for

organization-wide special counsel services, and will request supplemental funds on an as needed basis.

## **BACKGROUND AND ISSUE ANALYSIS:**

The City of Longmont routinely engages in numerous construction projects throughout the year, whether involving City owned buildings, roads, utilities or other public works projects. The City works with various contractors at all stages of the construction process, including but not limited to, requests for proposals or bids, notice of awards, contracting, bonding, insurance, as well as construction supervision and acceptance, and if needed, dispute resolution.

Construction law and construction defect litigation is a complicated area of law, and lawyers and law firms often specialize specifically in this area as their primary focus. The City currently has construction projects that are in need of legal review for possible issues related to construction defects. The City could also benefit from legal review of its current contracts and procedures from a specialized law firm in order to ensure that the City is up-to-date with industry standards and best practices. It would also be beneficial for the City to have a law firm under contract for general construction law advice should future issues arise and to help minimize liability to the City.

City staff worked with Purchasing and Contracts to conduct a Request for Proposals (RFP) process to identify construction law and construction defect litigation special counsel. Through the RFP process, the City received one proposal which was evaluated by a team of three evaluators based on the following criteria: capability, value/cost of efforts, and flexibility/understanding of requirements. Due to a lack of submittals and price, the City issued a non-award. The City subsequently issued a Request for Qualifications (RFQ), and sent the RFQ to several law firms specializing in construction law and construction defect litigation. The City received three proposals. The City interviewed two of the applicants, and the evaluation committee unanimously recommends Kutak Rock LLP to serve in that role.

Kutak Rock LLP is a national law firm with approximately 89 attorneys located in Denver. Kutak Rock LLP has broad and extensive experience in construction law and litigation, including with municipal clients in Colorado. Tiffanie Stasiak, partner and co-head of Kutak Rock LLP's construction practice group, will serve as the City's primary attorney. Ms. Stasiak focuses her practice on complex commercial and construction litigation, including design and construction deficiencies. Ms. Stasiak represents governmental and private owners, tax credit syndicators, investors and lenders, engineering, procurement, construction and maintenance (EPCM) companies, manufacturers, developers, general contractors and subcontractors in construction and business disputes and legal actions. Ms. Stasiak serves as counsel for several cities, counties, and authorities in the State of Colorado regarding large development and infrastructure projects. These projects include transportation, convention centers, airports,

commercial and residential developments. Ms. Stasiak earned her B.A. and law degree from Saint Louis University and is admitted to practice law in Colorado. Kutak Rock LLP also has several other experienced construction law and litigation attorneys in its construction practice group to assist with the City's legal needs. Additional detail and background information on Kutak Rock LLP can be found at <https://www.kutakrock.com/>.

It is also important for City Council to be aware of the cost to retain Kutak Rock LLP's notable expertise and experience. As set forth in the attached Special Counsel Contract, the final negotiated hourly rates for Kutak Rock LLP's partners are \$490, associates are \$390, and paralegals/law clerks are \$200. Kutak Rock LLP was responsive to City concerns regarding its hourly rate, and provided a significantly discounted rate for partners with the City, which was originally \$650 an hour.

For comparison, the table below sets forth the hourly rates for some of the City's other special counsel.

Special Counsel Firm	Subject Area	Hourly Rate
Kaplan Kirsch & Rockwell LLP	Environmental Issues Related to Development	\$468 – partner \$364 – associates \$150 – paralegal/law clerk
Hayes Poznanovic Korver LLC	Water Rights	\$290 – partner \$245 – associates
Wilson, Williams, Fellman, Dittman LLP	Telecommunications	\$250-400 – partner \$175-275 – associates \$95 – paralegal/law clerk
Hoffman Parker Wilson & Carberry, P.C.	Land Use and Eminent Domain	\$275 – partner \$245 – associates \$125 – paralegal/law clerk

City Charter section 8.3 provides that City Council, on its own motion or upon request of the City Attorney, may employ special counsel to serve under the direction of the City Attorney. For the reasons discussed above, the City Attorney, on behalf of the evaluation committee, requests City Council to award this special counsel contract to Kutak Rock LLP. A representative from Kutak Rock LLP will be in attendance at this meeting to address any questions that City Council may have.

## **ATTACHMENTS:**

Att 1 - Resolution for Special Counsel Contract  
Att 2- Special Counsel Contract  
Att 3 - Request for Quotes RFQ-424048  
Att 4 – Tiffanie Stasiak Resume