

**AMENDMENT TO THE AMENDED AND RESTATED SPECIAL COUNSEL
CONTRACT**

The City of Longmont, Colorado, ("City") and Kaplan Kirsch & Rockwell, LLP, ("Special Counsel") make this Contract considering the following:

Whereas, Longmont City Charter section 8.3 permits the City Council to appoint Special Counsel to serve under the direction of the City Attorney; and,

Whereas, Special Counsel has had a contract in place with City since 2014 for the provision of aviation legal advice and counsel as well as aviation-related litigation assistance; and,

Whereas, Special Counsel entered into an Amended and Restated Special Counsel Contract on March 3, 2022 for legal services related to redevelopment and urban renewal; and

Whereas, City wishes to engage Special Counsel to provide an expanded scope of services to encompass advice on federal and state environmental regulatory and permitting matters; and

Whereas, Special Counsel wishes to provide said services for the compensation stated;

Therefore, the City and the Special Counsel agree as follows:

SECTION 1 - RESPONSIBILITIES AND BASIC SERVICES OF SPECIAL COUNSEL

1.1 Beginning with the last necessary signature on this Contract and until termination of this Contract, Special Counsel agrees to perform professional services, as stated in this Contract and in the attached scope of services, and such other related responsibilities as the City Attorney may establish. Special Counsel shall consult with and advise the City Attorney and City's Using Department as requested during the performance of their services.

1.2 Special Counsel agrees to perform professional services on projects identified in approved action plans, or by the City Attorney or Using Department. Using Department means the Department or Division of the City identified in the scope of services. The Director of that Department or Division, or the Director's designee, shall act for the Using Department.

1.3 Special Counsel will review the project and their own records to insure against any conflict of interest that might prevent Special Counsel from fully and faithfully advising and representing the City. If any potential conflict or differing interest exists or arises, in the future, Special Counsel will immediately notify the City Attorney.

1.4 Using the attached form, Special Counsel, City Attorney and the Using Department will discuss and agree on Special Counsel's proposed plan of action for each separate project. The plan must be flexible, periodically reviewed, and possibly revised to reflect later developments. Each plan will address at least objectives, strategy, stages, staffing and budget.

1.5 Special Counsel will identify the lawyer primarily responsible for implementing the plan and all other lawyers and paralegals who will do significant work on the project. This will include an explanation of the expected division of labor and assignments. Staffing may change from time to time, but Special Counsel should promptly advise the City Attorney and Using Department.

1.6 It is always the City's intent to handle projects in the most efficient manner possible, consistent with other expressed objectives. Special Counsel should base decisions about the level of effort or of staffing to apply to meetings (and their frequency), interviews, travel, court arguments, depositions, procedural objections, number of drafts, and negotiations, or their necessity for implementation of the City's objectives and strategy. Also, Special Counsel should, in deciding on the extent and mode of travel and other reimbursable expenses, consider efficiency and overall expense to the City.

1.7 The Using Department shall authorize Special Counsel to start work, with ultimate supervision by the City Attorney. That authorization will state all special conditions and requirements not otherwise stated in this Contract.

1.8 In performing this Contract, the hours Special Counsel is to work on any given day are entirely within Special Counsel's control. City will rely upon Special Counsel to devote the time, skill and effort reasonably necessary to fulfill the purpose of this Contract.

1.9 Special Counsel shall determine all pertinent filing dates or other deadlines for each project. Special Counsel shall comply with all applicable filing dates or deadlines, or obtain sufficient extensions to protect the City's interests.

1.10 Full and regular communications are essential to this Contract. Special Counsel, the City Attorney and the Using Department shall actively address all developments that could significantly affect a project. Except in an emergency, Special Counsel shall make no significant decision on direction, mechanics or strategy for a Project without prior communication and discussion with the City Attorney.

1.11 Special Counsel is an independent contractor for professional legal services and not an employee of the City for any purpose. **Special Counsel shall receive none of the benefits the City provides for City's employees. Special Counsel has no right to Workers Compensation benefits from the City or its insurance carriers or funds.**

1.12 Insurance Requirements: Before beginning, and while performing under this Contract, Special Counsel shall show the City Attorney that Special Counsel has, and shall maintain, without cost to the City, the following insurance:

1.12.1 Malpractice coverage with minimum limits of \$2,000,000 per occurrence;

1.12.2 General Liability Insurance policy with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate. This policy must include

the following coverage: Bodily Injury, Contractual Liability, Broad Form Property Damage, Completed Operations and Personal Injury, and must add the City of Longmont, its officers and employees as Additional Insureds;

1.12.3 Automobile Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with a minimum limit of \$1,000,000 combined single limit for each occurrence, and must add the City of Longmont, its officers and employees as Additional Insureds;

1.12.4 Workers' Compensation and Employers Liability Insurance covering benefits for and obligations of Special Counsel according to the Colorado Workers Compensation Act, as amended. The policy shall contain a waiver of subrogation on behalf of the City.

1.13 Before permitting them to work on any project, Special Counsel shall ensure that any Subcontractors are properly insured according to these requirements.

1.14 Special Counsel shall not cancel, materially change, or fail to renew insurance coverage. Special Counsel shall notify the City's Risk Manager, Civic Center Complex, Longmont, CO 80501, of any material reduction or exhaustion of aggregate limits. If any insurer cancels a policy and a replacement is not immediately obtained, such inaction shall constitute a breach of this Contract. Nothing in these insurance requirements shall limit Special Counsel's responsibility to pay damages otherwise resulting from the services Special Counsel provides under this Contract.

SECTION 2 - THE CITY'S RESPONSIBILITIES

The City shall, with ultimate supervision by the City Attorney:

2.1 Provide full information from the City, including detailed scope of work, required for Special Counsel's performance.

2.2 Promptly notify Special Counsel whenever the City notices any defect in the performance of the Special Counsel.

SECTION 3 - MUTUAL OBLIGATIONS OF THE CITY AND THE SPECIAL COUNSEL

3.1 This Contract does not guarantee to Special Counsel any work, except as authorized according to Section 1.1, above.

3.2 All of the services contemplated under this Contract are personal. Special Counsel shall not, without the prior written consent of the City, assign, sublet, or transfer its rights or obligations under this Contract to anyone outside the law firm of Special Counsel. Any member of Special Counsel's law firm licensed to practice law in this state may, at the direction, and under the supervision of, Special Counsel, perform services.

SECTION 4 - PAYMENT AND FEE SCHEDULE

4.1 City shall pay Special Counsel for services furnished according to this Contract, and Special Counsel shall accept as full payment for such services, fees computed as follows:

Shareholder or Partner	\$450 per hour
Associate	\$350 per hour
Law Clerk/Paralegal	\$150 per hour

4.2 Special Counsel will, by the 10th of every month, present to the City monthly billings for professional services performed.

4.3 The fees set forth above may be adjusted periodically upon the City's prior written consent. Increases shall not be greater than 4 percent per year.

4.4 The City shall also reimburse Special Counsel for any reasonable costs or fees associated with action pursued by the City. For example only, such fees would include court filing fees, deposition costs, courier costs, and reimbursement for mealtime meetings requested by the City. The City will also reimburse Special Counsel for reasonable photocopying, telephone, facsimile and mailing costs.

4.5 Special Counsel will be solely responsible for their own automobile transportation to and from Special Counsel's home or office. The City will not reimburse Special Counsel for such routine automobile mileage. Nonetheless, reasonable and necessary out-of-town travel will be a reimbursable expense.

4.6 Special Counsel is solely responsible for all state and federal income and FICA taxes on income under this Contract. The City shall not withhold any taxes except as federal, state, or local law requires. Upon request, the City will provide Special Counsel timely and proper tax documents reflecting compensation paid.

4.7 This Contract is subject to the appropriation of funding by the Longmont City Council.

SECTION 5 - CHARTER, LAWS, ORDINANCES AND CITY ATTORNEY POLICIES

5.1 Special Counsel shall observe all applicable federal and state laws, ordinances, Charter provisions, rules and regulations that in any way affect the work contemplated by this Contract. Special Counsel shall promptly call to the City Attorney's attention, for resolution, any conflict between the terms of any of these. Absent such resolution, the items listed above shall take precedence in the order listed.

SECTION 6 - TERMINATION

6.1 Termination for Cause: If, through any cause, Special Counsel fails to fulfill, in a timely and proper manner, obligations under this Contract, or violates any covenants, agreements, or stipulation of this Contract, the City, through the City Attorney, may terminate this Contract by giving written notice to Special Counsel. The notice shall specify the reasons for, and effective date of, termination.

6.2 Termination for Convenience of City or Special Counsel: The City or Special Counsel may terminate this Contract at any time, by giving reasonable written notice to the other party, specifying the effective date. Should Special Counsel terminate this Contract, it shall observe all ethical and professional requirements regulating the withdrawal from representation.

SECTION 7 - ADDENDA OR EXTENSIONS

7.1 The City may, from time to time, require changes in the scope of the services of Special Counsel. The parties shall incorporate into written addenda or extensions of this Contract any such changes. Each party shall sign such documents before they become effective.

SECTION 8 - SPECIAL CONDITIONS

8.1 **CONFIDENTIALITY**. During and after the term of this Contract, Special Counsel shall not disclose to third parties any confidential information, data, or other confidential information. Special Counsel shall treat such information as the private and privileged records of the City and Special Counsel. Without City's express consent, Special Counsel shall not release such information to any third party by statement, deposition, as a witness or otherwise.

8.2 **LICENSES**. Special Counsel shall maintain all licenses necessary to perform under this Contract, including Special Counsel's license to practice law in the State of Colorado.

8.3 **SEVERABILITY**. To the extent the parties may perform and accomplish their obligations within the intent of this Contract, its terms are severable. Should any term or provision be invalid or become inoperable for any reason, such invalidity or failure shall not affect the validity of any other terms or provisions. Waiver of any breach of a term shall not indicate a waiver of any other term, or the same term upon later breach.

8.4 **INDEMNITY**. Special Counsel releases and agrees to indemnify, defend and hold harmless the City, its agents, officers, employees and volunteers from and against all damages, claims, actions, causes of action, demands, judgments, costs and expenses of every kind and nature, for injury to or death of any person or loss of or damage to any property or other rights, arising, in any manner, from the services Special Counsel provides under this Contract.

8.5 **PROVISIONS CONSTRUED AS TO FAIR MEANING**. The provisions of this Contract shall be construed as to their fair meaning, and not for or against any party.

8.6 HEADINGS FOR CONVENIENCE. All headings, captions and titles are for convenience and reference only and of no meaning in the interpretation or effect of this Contract.

8.7 NO THIRD PARTY BENEFICIARIES. This Contract shall afford no claim, benefit, or right of action to any third party. Any party besides the City or the Special Counsel receiving services or benefits under this Contract is only an incidental beneficiary.

8.8 FINANCIAL OBLIGATIONS OF CITY. All financial obligations of the City under this Contract are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Contract shall be deemed a pledge of the City's credit, or a payment guarantee by the City to Special Counsel.

8.9 WAIVER. No waiver of any breach or default under this Contract shall be a waiver of any other or subsequent breach or default.

8.10 DAMAGES FOR BREACH OF CONTRACT: In addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract, if the City terminates this Contract, in whole or in part, due to Special Counsel's breach of any provision of this Contract, Special Counsel shall be liable for actual damages to the City.

[Signature pages to follow]

APPROVED PER CITY CHARTER § 8.3
CITY OF LONGMONT, COLORADO
this _____ day of _____, 2022

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM this _____ day of _____, 2022

Eugene Mei, City Attorney

Proofread

ACCEPTED AND AGREED this _____ day of _____, 2022

Using Department Director

CA File: 22-001830

ACCEPTED AND AGREED this _____ day of _____, 2022

Kaplan Kirsch & Rockwell LLP
1675 Broadway
Suite 2300
Denver, CO 80202

State of Colorado)
) ss
County of _____)

_____, whom I know to be the _____
of the firm named as Special Counsel above, and whom I know is authorized to sign for the firm,
acknowledge the signature for the firm before me this _____ day of _____ 2022.

Witness my hand and official Seal.

My Commission expires _____.

Notary Public

Scope of Services

I. Special Counsel will provide advice on development and redevelopment issues including, but not limited to, urban renewal, infill development, environmental issues related to development, financing options, transit oriented development, public-private partnerships, and other development-related matters at the direction of the City Attorney to City departments and divisions as requested by the City. Advice will include general advice, negotiation, drafting of contracts, and litigation, as requested.

II. Special Counsel will provide advice on aviation law issues as requested by the City, including but not limited to: review of the Vance Brand Municipal Airport's leasing policies; advice on FAR Part 150 (Airport Noise Compatibility Planning) and FAR Part 161 (Notice and Approval of Airport Noise and Access Restrictions), including how they may play into the City's future administration of the Airport; advice on rates and charges, proper use of Airport property and review of Airport rules and regulations to ensure compliance with applicable law, including but not limited to Federal Aviation Regulations and FAA Grant Assurances; guidance and advice on FAR Part 13 (Investigative and Enforcement Procedures) and FAR Part 16 (Rules of Practice for Federally Assisted Airport Enforcement Proceedings); and related litigation, including FAR Part 13 and Part 16 proceedings.

III. Special Counsel will provide advice on federal and state environmental regulatory and permitting matters related to the Clean Water Act, the Safe Drinking Water Act, the National Environmental Policy Act, rules and regulations from the Colorado Department of Public Health and Environment, matters concerning the City's wastewater and potable water treatment system, and other environmental regulatory matters concerning the City's water resources at the direction of the City Attorney. Advice will include general advice; negotiations, discussions with, and representation before relevant governmental regulatory bodies; and resolution of potential claims, as requested.

CITY OF LONGMONT SPECIAL COUNSEL ACTION PLAN

Date: July 5, 2022

Project: [ENTER NAME OF PROJECT FROM C.A. MATTER FILE, IF ANY, THEN PRESS F11 TO CONTINUE]

Opposing Party or Parties: [ENTER NAME(S) OF OPPOSING PARTIES, IF ANY, THEN PRESS F11 TO CONTINUE]

City Attorney Matter #: [ENTER C.A. MATTER #, THEN PRESS F11 TO CONTINUE]

Objectives -
[ENTER PROJECT OBJECTIVES, THEN PRESS F11 TO CONTINUE]

Strategy -
[ENTER PROJECT STRATEGY, THEN PRESS F11 TO CONTINUE]

Stages -
[ENTER PROJECT STAGES, THEN PRESS F11 TO CONTINUE]

Staffing -
[ENTER PROJECT STAFFING, THEN PRESS F11 TO CONTINUE]

Budget -
[ENTER PROJECT BUDGET, THEN PRESS F11 TO CONTINUE]

Account #:_____

City Attorney Approval:_____Date:_____

Using Department Approval:_____Date:_____

Special Counsel Approval:_____Date:_____

CITY OF LONGMONT SPECIAL COUNSEL ACTION PLAN REVISIONS

Date: July 5, 2022

Project: [ENTER NAME OF PROJECT FROM C.A. MATTER FILE, IF ANY, THEN PRESS F11 TO CONTINUE]

Opposing Party or Parties: [ENTER NAME(S) OF OPPOSING PARTIES, IF ANY, THEN PRESS F11 TO CONTINUE]

City Attorney Matter #: [ENTER C.A. MATTER #, THEN PRESS F11 TO CONTINUE]

Revised Objectives -
[ENTER PROJECT OBJECTIVES, THEN PRESS F11 TO CONTINUE]

Revised Strategy -
[ENTER PROJECT STRATEGY, THEN PRESS F11 TO CONTINUE]

Revised Stages -
[ENTER PROJECT STAGES, THEN PRESS F11 TO CONTINUE]

Revised Staffing -
[ENTER PROJECT STAFFING, THEN PRESS F11 TO CONTINUE]

Revised Budget - Cumulative
[ENTER PROJECT BUDGET, THEN PRESS F11 TO CONTINUE]

Account #: _____

City Attorney Approval: _____ Date: _____

Using Department Approval: _____ Date: _____

Special Counsel Approval: _____ Date: _____