

# CITY COUNCIL COMMUNICATION



**MEETING DATE:** July 12, 2022

**ITEM NUMBER:** 9.C

**SECOND READING:**

{{customfields.ResoOrdNumber}}

**TYPE OF ITEM:** Consent

**PRESENTED BY:**

Eugene Mei, City Attorney's Office, [Eugene.Mei@longmontcolorado.gov](mailto:Eugene.Mei@longmontcolorado.gov)

Bob Allen, Public Works and Natural Resources, [Bob.Allen@longmontcolorado.gov](mailto:Bob.Allen@longmontcolorado.gov)

**SUBJECT/AGENDA TITLE:**

A Resolution Of The Longmont City Council Approving The Amendment Of The Amended And Restated Special Counsel Contract Between The City And Kaplan, Kirsch And Rockwell LLP To Expand The Scope Of Work To Include Environmental And Regulatory Compliance Special Counsel Services

**EXECUTIVE SUMMARY:**

Recently, the Public Works and Natural Resources Department (PWNR) approached the City Attorney's Office seeking legal advice regarding the upcoming renewal of the City's wastewater treatment plant's discharge permit with the Colorado Department of Public Health and Environment. This led to a bigger picture conversation regarding PWNR's need for broader environmental regulatory permitting and compliance special counsel services. In order to meet this need, the City Attorney's Office and PWNR staff propose to expand the current scope of Kaplan Kirsch and Rockwell's (KKR) special counsel contract. As City Council may recall, KKR has been the City's aviation special counsel since December 2014, and in February 2022, KKR was the successful respondent to the City's Request for Proposals (RFP) for redevelopment and development special counsel. Given KKR's track record of excellent legal representation of the City and recent successful participation in a City RFP process, City staff is recommending expanding the scope of work for KKR's existing special counsel to include environmental and regulatory compliance without conducting an additional procurement process. Nathaniel Hunt would be the primary KKR attorney assisting the City, and his credentials and work experience are well suited to meet the City's current and future needs for environmental special counsel services.

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. Expand the scope of Kaplan Kirsch Rockwell special counsel contract to include environmental regulatory permitting and compliance.

2. Do not expand the scope of Kaplan Kirsch Rockwell special counsel contract to include environmental regulatory permitting and compliance enter.

**RECOMMENDED OPTIONS:**

Expand the scope of Kaplan Kirsch Rockwell special counsel contract to include environmental regulatory permitting and compliance.

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

Contract services shall be paid based on payment and fee schedule outlined in the Special Counsel contract. PWNR has funds that are typically used for environmental regulatory permitting and compliance activities that can be redirected to special counsel services as needed.

**BACKGROUND AND ISSUE ANALYSIS:**

Environmental regulatory permitting and compliance is an increasingly dynamic and complex area that has significant impact on the City. Specifically, the Colorado Department of Public Health and Environment (CDPHE), the primary environmental regulatory agency at the state level, continues to engage in new rulemaking, update its discharge requirements, and identify new contaminants of interest. These CDHPE actions commonly have significant impacts on City operations, capital facilities, and staffing.

Historically, keeping up-to-date on changes in regulatory environmental regulatory permitting and compliance at the City has been the province of PWNR staff with limited support from the City Attorney's Office. However, with the change of pace and continually shifting environmental regulatory landscape, staff believes it is in the City's best interest to take a more strategic approach to environmental compliance that more fully integrates legal support into the short and longer term planning horizon. A failure to do so may lead to significant costs to the City that could otherwise be avoided. This type of broader team effort would enhance the City's ability to anticipate upcoming changes, negotiate more balanced resolution of compliance issues, and contest unfavorable outcomes if necessary.

In order to meet this need, the City Attorney's Office and PWNR staff propose to expand the current scope of KKR special counsel contract. If KKR's name sounds familiar to City Council, that may be because the City retained KKR in December 2014 as aviation special counsel. KKR attorneys have guided the City through a number of controversial and challenging issues at Vance Brand Municipal Airport arising primarily from Mile-Hi Skydiving's operations including noise concerns, land zone fees, and subsequent state litigation and Part 16 proceedings before the Federal Aviation Administration. KKR obtained favorable outcomes for the City on all of these issues, and in that time, has gained the trust and respect of staff for excellent strategic and legal advice.

More recently, KKR was the successful respondent to the City's Request for Proposals (RFP) for redevelopment and development special counsel in February 2022. Since that time, KKR has hit the ground running by providing legal support for a number of redevelopment opportunities in the City, including the exciting 1<sup>st</sup> and Main Street project with RTD in the rapidly revitalizing south Main Street area. Given KKR's track record of excellent legal representation of the City and recent successful participation in a City RFP process, City staff is recommending expanding the scope of work for KKR's existing special counsel to include environmental and regulatory compliance without conducting an additional procurement process.

Nathaniel Hunt would be the primary KKR attorney assisting the City, and his credentials and work experience are well suited to meet the City's current and future needs for environmental special counsel services. Mr. Hunt legal practice focuses on counseling and litigating on behalf of governments, environmental groups, and others regarding water quality, wetlands, National Environmental Policy Act, hazardous waste, various environmental matters, and Freedom of Information Act requests. His representative engagements include:

- ❖ City of Northglenn, Colorado - Represented City of Northglenn in successful defense of wastewater treatment permit in state administrative appeal proceeding.
- ❖ Georgia River Network v. U.S. Army Corps of Eng'rs, 517 Fed. Appx. 699 (11th Cir. 2013) - Challenged Corps' issuance of a Clean Water Section 404 permit for 1000-acre recreational reservoir, including appeal at the Court of Appeals for the Eleventh Circuit.

It is also important for City Council to be aware of the cost to retain KKR's notable expertise and experience. City staff appreciates KKR's willingness to offer a discounted government rate to Longmont as compared to its standard rates. As set forth in the attached Amendment to the Amended and Restated Special Counsel Contract, the final negotiated hourly rates are \$450 for partners (standard rate \$500-750), \$350 for associates (standard rate \$400-500), and \$150 for paralegal/law clerks (standard rate \$180). 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
Brownstein Hyatt Farber Schreck, LLP	Development/Redevelopment	\$495 – partner \$320 – associate
Phillip D. Barber, P.C.	Oil and Gas	\$325
Hayes Poznanovic Korver LLC	Water Rights	\$285 – partner \$210 – associates
Kissinger & Fellman	Telecommunications	\$305 - partner

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Hoffman Parker Wilson & Carberry, P.C.	Land use and eminent domain	\$245 – partner \$175 – associates \$100 – paralegal/law clerk
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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 discuss above, the City Attorney and PWNR staff requests City Council approve the amendment to KKR’s special counsel contract to include environmental regulatory permitting and compliance. A representative from KKR will be in attendance at this meeting to address any questions that City Council may have.

**ATTACHMENTS:**

Att 1 - Resolution for An Amendment to the Amended and Restated Special Counsel Contract

Att 2- Amended and Restated Special Counsel Contract

Att 3 - Summary Information on Kaplan Kirsch and Rockwell, LLP