

SPECIAL COUNSEL STANDARDS



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APPENDIX A ACCEPTANCE OF THE CITY OF STAUNTON’S SPECIAL COUNSEL STANDARDS

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1. INTRODUCTION

Under Section 2.35.010 of the Staunton City Code, the City Attorney “will have the management, charge, and control of all law business of the city and be the legal adviser of the mayor, council, city manager and the several departments of the city government...” In furtherance of this responsibility, by resolution dated May 9, 2019, City Council states: “the City Attorney has the continuing authority, without further action of City Council, to commence and defend and direct and manage all claims, actions, suits, appeals, challenges and all other proceedings of any nature and to discontinue any such matters in any court, tribunal or in any forum that, in the judgment and discretion of the City Attorney, serves the City's interests.” The City Attorney functions as general counsel for the City. At times, in discharging this responsibility and performing this function, the City Attorney retains or uses outside counsel (Special Counsel) as an advisor and advocate for the interests of City-related bodies and officials and employees (or the City) for a variety of reasons, including the need for specialized legal services, the existence of a conflict of interest, or to manage internal workload overflow or unique situations. “Special Counsel” includes not only the lawyers performing the work but all of the lawyers in the same law firm and, in addition, those engaged by the City’s pooled risk/insurance program to defend or represent the City.

The City Attorney will engage or accept engagement by the City’s pooled risk/insurance program of Special Counsel that is committed to providing the highest quality legal services to the City in the most reasonable cost-effective manner. Special Counsel is expected to represent the City with expertise, integrity, professionalism, and a sense of priority and resourcefulness in resolving legal matters.

The City Attorney has adopted these Special Counsel Standards (Standards) to apply when Special Counsel is engaged directly by the City through the City Attorney or by the City’s pooled risk/insurance program. These Standards establish the City’s expectations and define an effective working relationship with Special Counsel, in order to make expectations clear, streamline processes, and enhance results and efficiency. Special Counsel must evidence acceptance of the Standards by executing and returning the acceptance in the form as attached as Appendix A which may be waived for pooled risk/insurance counsel with which the City has a regular or recurring periodic relationship.

All attorneys, professional staff and third-party vendors who work on behalf of the City, directly, or, indirectly, must adhere to these Standards. Nothing, however, in these Standards is in any way intended to interfere with Special Counsel’s proper professional judgment or duties as an advisor and advocate representing City-related interests.

The City Attorney always welcomes a conversation about the Standards. And while the City Attorney reserves the prerogative to amend these Standards at any time, it expects in advance to share any applicable substantive changes with Special Counsel.

2. RETENTION OF NON-INSURANCE SPECIAL COUNSEL

2.1 Generally

The City Attorney will retain Special Counsel through an engagement letter transmitted to Special Counsel. The Special Counsel must execute the original of the engagement letter and also complete and execute whatever additional forms the engagement letter contemplates.

Invoices for services are eligible for payment after Special Counsel has returned to the City Attorney the engagement letter and all documents properly completed and executed. Attached as Appendix B is the format for an engagement letter.

2.2 Other Special Counsel for City Authorities and Boards

The City Attorney does not control the otherwise legally authorized retention and use of Special Counsel by all City authorities and boards whose members are appointed by City Council. Nonetheless, any City authority or board, whose members are appointed by City Council, and any other City board or commission or authority that engages Special Counsel may use these Standards to give specific direction to such Special Counsel, including an expectation that no special counsel will assume a role contrary to section 3 of these Standards. No City authority or board may undertake to hire Special Counsel absent express legal authority and sufficient public funds for that particular purpose.

Special Counsel for the City and counsel for City authorities and boards should not regularly be attending meetings of City-related public bodies. Attendance should be limited to an identified need on a particular issue or matter when physical meeting attendance is necessary and there is no adequate substitute arrangement for attendance (such as remote participation by telephone conference call or available technology, e.g., Zoom™, Go To Meeting™, WebEx™). This expectation is intended not just to manage legal expense but also to minimize the risk of misperception that the public body is unnecessarily dependent on legal counsel for usual operations and decision-making, especially when the public body members have received or had the opportunity to receive training, including on legal aspects, in their field of public service (e.g., VFOIA, VCOIA, Zoning, Housing, etc.).

Unless the City Attorney, pursuant to an agreement between City Council and the School Board, also serves as counsel to the School Board, these Standards also apply to Special Counsel for the School Board. A Virginia school board, nonetheless, may employ counsel notwithstanding any other provision of law, under the provisions of Va. Code Section 22.1-82, subject to available appropriated funds and properly authorized engagement.

2.3 Pooled Risk/Insurance Program Special Counsel

The City has a pooled risk/insurance program, which includes counsel engaged by an authorized representative of the pooled risk/insurance program to defend the City. The City Attorney expects that the pooled risk/insurance program representative will consult with the City Attorney about selection of such counsel, given that such pooled risk/insurance counsel's client is actually the City. The expectations of Sections 3, 5, 7, 9, and 10 also apply, and the City Attorney expects that such Special Counsel will consult with the City Attorney before any admission, stipulation, settlement offer or use of mediation is made in a matter, whether the matter is already in litigation or not.

3. CONFLICTS OF INTEREST

3.1 Initial Conflicts Check

Prior to engagement, Special Counsel will perform a thorough check for actual or potential conflicts of interest, as defined by the applicable rules of professional conduct, which may arise from Special Counsel's representation of the City. Special Counsel must use best efforts to identify and discuss with the City Attorney immediately any such actual or potential conflicts and also any potential conflicts of a philosophic or policy-driven nature (i.e., positional conflicts) that may compromise a position taken by the City (if Special Counsel is presently advocating, or intends to advocate, a position adverse to or at tension with the position of the City). Any actual, potential, or perceived conflict must be discussed with the City Attorney. The City Attorney will make an independent determination as to whether Special Counsel has an actual or potential or perceived conflict, as discussed below, that informs whether the engagement will proceed beyond what Special Counsel may conclude.

The acceptance by Special Counsel of an engagement on a matter without written disclosure of any conflicts constitutes a representation by Special Counsel that a conflicts check has been conducted and that there are no issues within the context of these expectations about conflicts. It also constitutes a representation that Special Counsel will not take any conflicting or adverse position as to the City as contemplated in these Standards.

3.2 Conflicts

The City has a duty and right to protect its interests, including public perception of those interests. For this reason, the City prohibits Special Counsel from representing private parties before the City, even in connection with non-adversarial proceedings. For example, Special Counsel generally is prohibited from representing a private party before the City in connection with applications for City approvals.

In addition, Special Counsel cannot represent private parties with interests adverse to the City in matters in which the City is involved as a party. Special Counsel may not represent the City in matters involving private parties if Special Counsel (or law firm) concurrently represents those private parties in other matters. Furthermore, Special Counsel may not take an adversarial position

against the City on behalf of any private or other public client(s) during the course of Special Counsel's representation of the City. Special Counsel is precluded from undertaking the representation of another client if the representation presents a substantial risk that Special Counsel's responsibilities to the City would limit its ability to provide independent advice or diligent and competent and zealous representation to either the City or the other client.

In accordance with the disclosure obligations of the Standards, Special Counsel must promptly and fully disclose to the City Attorney any potential conflicts. The City Attorney, after consultation with Special Counsel, will have the sole prerogative to determine whether an impermissible conflict exists, or whether other circumstances exist that would undermine the City's interests.

3.3 Continuing Obligation

The obligation to avoid and disclose conflicts continues throughout the course of the representation. Special Counsel must review the subject of conflicts on an ongoing basis as new matters are opened. Any new attorney/client relationships that potentially may create a conflict must be reported to the City Attorney immediately in a way that is consistent with the professional conduct rules and with the Standards.

4. RESPONSIBILITIES OF THE CITY OF STAUNTON

Only the City Attorney has authority on behalf of the City to direct Special Counsel in the handling of the matter. Other than usual coordination, Special Counsel will not initiate, directly or indirectly, contact with any other City representative unless specifically authorized by the City Attorney unless extraordinary circumstances exist. If another City representative asks Special Counsel to proceed in a certain fashion or to perform certain activities with respect to a specific legal matter, Special Counsel must report the request to the City Attorney and obtain direction prior to proceeding. It is vital that Special Counsel stay coordinated with the City Attorney at all times.

As part of the engagement, the City Attorney intends to provide clear, specific instructions; communicate the City's objectives; closely monitor the management plan; follow the progress of the matter; and keep Special Counsel informed of important developments. The City Attorney also will act as liaison between Special Counsel and the City unless unique circumstances dictate otherwise.

5. SPECIAL COUNSEL RESPONSIBILITIES

5.1. Overall

The City expects Special Counsel to understand the City's business and environment, the tolerance and appetite for risk especially in particular situations, the decision-making structure and dynamics, the significance and extent and tone of internal and external communications, and, vitally, the strategic context of transactions and issues, the disputes on which Special Counsel will be

advising and advocating. The City expects Special Counsel to appreciate what it's like to be in the City's shoes and understand the world from the City's perspective. Yet, at the same time, Special Counsel should bring to any engagement a constructive willingness as part of a team to challenge what may be regarded as conventional legal-related perspectives and notions, offering new insights that promote achievement of the City's objectives and resolution.

The City anticipates that Special Counsel always will take care to pause to listen and distinguish keenly between those occasions when the City wants quick, rough-and-ready guidance orally as opposed to written detailed and exhaustive legal analysis and work product, which can be unnecessary, delaying and costly. Special Counsel should assume that, in most instances unless informed otherwise, the City seeks legal solutions that might be characterized as a near-80% solution, if not something even less depending on the risk-reward calculus. The City accepts that its environment contains risks, and that there is no such thing as a risk-free solution or answer or approach. The City expects that Special Counsel will always remember that the City generally is the decision-maker, as guided and expressed by the City Attorney as general counsel.

5.2 Identification of Relationship Attorney and Objectives

Special Counsel will designate a relationship attorney (the Relationship Attorney), with the approval of the City Attorney, to be the principal contact generally with the City. The City Attorney expects to clearly define the objective(s) to be achieved, and Special Counsel should have a clear understanding of its role in achieving those objectives. Special Counsel is expected to offer clear recommendations for all major decisions related to a matter or task. Special Counsel must consult with the City Attorney before acting on any major decision.

5.3 Exceptions to Standards

It is Special Counsel's and the Relationship Attorney's responsibility to discuss with the City Attorney all questions concerning the application of these Standards before proceeding on a course of action not specifically authorized by the Standards. If an exception to the Standards is deemed necessary, a request must be submitted and approval obtained from the City Attorney. The City will not reimburse Special Counsel for any fees or expenses incurred which are not authorized by anyone other than the City Attorney, unless an exception is approved by the City Attorney.

5.4 Communication

In addition to performing assigned legal work in a competent and timely manner and undertaking informed, ethical actions on behalf of the City, Special Counsel will keep the City Attorney informed of all material developments. Special Counsel must provide regular, timely, and effective communication to the City Attorney, including responses to City Attorney inquiries.

5.5 Ethical Standards

The City Attorney undertakes to act in accordance with ethical standards and expects the same of Special Counsel. Special Counsel should advise the City Attorney of the City's

responsibilities under applicable laws and regulations and any legal risks in a proposed course of action. If Special Counsel believes that a City employee or representative has or will engage in illegal or unethical activity purportedly as a representative or agent of the City, the Relationship Attorney must immediately and discreetly advise the City Attorney. No City employee or representative has the authority to instruct Special Counsel to act in an unethical manner or tolerate a conflict or unethical action in connection with any matter.

5.6 Malpractice Insurance

Special Counsel representing the City is expected to maintain legal malpractice insurance coverage that is reasonable and prudent in relation to the types and sizes of matters handled. Special Counsel will, upon execution of an engagement letter, promptly provide the City Attorney with evidence of any applicable policies required under this section of the Standards. If Special Counsel does not have coverage or if coverage is cancelled and not immediately replaced with comparable coverage, Special Counsel must immediately report it to the City Attorney.

5.7 File Retention

For Litigated Matters Generally: Special Counsel will retain pleadings, correspondence, discovery materials, deposition transcripts and similar documents and work product for a period of no less than five (5) years from the date the matter is concluded or for the time period specified by rule or law in the jurisdiction in which the matter was pending, whichever is longer. Special Counsel will notify the City Attorney in writing no less than ninety (90) days prior to destroying any file. Along with the written notification, Special Counsel will submit an inventory of any original City documents contained in the file to be destroyed.

For Bond and Other Transactions, and Other Miscellaneous Advice Matters: Documents will be retained in accordance with the same policies applicable to litigated matters unless applicable law mandates a longer retention schedule. However, bond counsel and transactional/advice Special Counsel will retain all transcripts of transactions and memoranda of advice indefinitely unless otherwise directed by the City Attorney.

6. CONFIDENTIALITY

Special Counsel frequently gains access to nonpublic and confidential information. The City requires Special Counsel to maintain the confidentiality of such information both during and after the course of Special Counsel's representation of the City. Special Counsel must have in place appropriate procedures to ensure the protection of all such information and will institute and maintain a wall of protection so that no other attorney or staff has access to such information unless necessary and directly involved as part of the representation. Special Counsel must follow all statutory, regulatory, and ethical provisions relating to privacy, confidentiality, and nondisclosure of all privileged, proprietary, and other confidential information.

Special Counsel must consult with the City Attorney before disseminating any potentially sensitive information acquired from the City or developed or learned while representing the City.

In addition, third-party vendors engaged by Special Counsel that acquire or have access to confidential or proprietary material of the City (including work product) should be requested to sign the confidentiality agreement attached as Appendix C. It is the responsibility of Special Counsel to obtain signed confidentiality agreements from third-party vendors and to retain them.

7. MANAGEMENT, REPORTING, AND BUDGETING

7.1 Plan and Status Reports

7.1.1 Litigation and Advice Matters

Both during the initial representation process and at regular intervals, Special Counsel is expected to discuss informally with the City Attorney the City's goals, and possible strategies and tactics for achieving the goals and objectives identified. Promptly upon assignment of a matter, Special Counsel must discuss with the City Attorney an informal management plan for the matter or project, unless directed otherwise by the City Attorney. Special Counsel will notify the City Attorney immediately of all developments that may cause or merit a change in the plan or that may cause a significant increase in cost or expense or legal risks to the City. The City realizes that legal matters may be dynamic, so projected expense certainly is not expected to be precise or static; at the same time, the shared consideration is an informed understanding of expense.

7.1.2 Bond and Other Transactional Work

For bond and other transactions, Special Counsel is expected to provide a counsel engagement letter and a fee estimate and cap for the transaction prior to commencing work, which fee cap must be approved by the City Attorney. During the course of work on the transaction, if such Special Counsel believes that the transaction has materially changed such that the fee cap will be exceeded, Special Counsel must submit a written request for an increase in the fee cap for approval by the City Attorney as soon as such Special Counsel becomes aware that the original fee cap may be exceeded. No payments above the fee cap will be made unless and until a revised fee cap has been approved by the City Attorney.

7.2 Pleadings, Motions and Other Documents

Decisions to prepare and file substantive pleadings or substantive other documents on behalf of the City will be made collaboratively by Special Counsel and the City Attorney. Before commencing work on any brief or legal memorandum, or other documents as to transactional projects or special tasks, Special Counsel will ask the City Attorney whether any prior legal research, briefs, memoranda, or work product has been prepared on the issue and if it can be used in the current matter. Any decision to prepare pleadings or conduct extensive research not contemplated in the plan requires prior informal approval of the City Attorney. Unless otherwise directed, Special Counsel will forward a draft copy of all pleadings and any other draft documents to the City Attorney for review no less than seven (7) business days before the filing or transmittal deadline or date, when practical. Only in exceptional circumstances should the lead time be less than seventy-two (72) hours.

Any affidavits or declarations prepared by Special Counsel for signature by a City employee or representative must be reviewed and authorized in advance by the City Attorney. Special Counsel is encouraged to use certifications or declarations in lieu of affidavits in jurisdictions where allowed.

Unless otherwise instructed, Special Counsel will promptly forward copies of all files, substantive pleadings, draft documents sent or received, and correspondence to the City Attorney and to the City Attorney's legal support manager. In addition, Special Counsel will notify and remind the City Attorney, as early as possible, regarding all significant dates, including all major discovery deadlines, court appearances, trial dates, and closing dates, coordinating with the legal support manager for the City Attorney as well.

7.3 Discovery

Special Counsel will collaborate with the City Attorney and the City Attorney's legal support manager on items relating to document collection, review, and production, and other discovery-related matters. The City is committed to identifying and working toward a process that mitigates risk and is cost-effective, while meeting all discovery obligations imposed by applicable rules, practices, and orders.

8. STAFFING AND BILLING POLICY

8.1 Staffing of Matters

Throughout the engagement, the City Attorney and Special Counsel will confer and agree on which attorney within the Special Counsel firm will have primary responsibility for the matter and on the parameters or changes. Any Special Counsel assignment change must be discussed with the City Attorney and approved in advance by the City Attorney. While it is important to have an adequate number of personnel at the right levels involved, the City expects Special Counsel to exercise care to avoid duplication or overstaffing of matters. Unless otherwise approved in advance, the City will not pay for: (1) more than one attorney to attend a trial, motion hearing, conference, meeting, or deposition; (2) internal firm conferences and internal written (including electronic) communication; or (3) the inclusion of associates at meetings or hearings for the purpose of associate development. In the event that the City Attorney approves internal firm conferences, the City will only reimburse the time of the senior attorney for any such conferences.

The City expects staffing to be efficient. Special Counsel is expected to utilize the services of partners, associates, and staff to meet the City's expectations in the highest quality and most cost-effective manner. Routine secretarial file maintenance and other administrative functions are Special Counsel's responsibility as overhead and should not be billed to the City absent concurrence of the City Attorney. Please review the Fees section below for a list of operational clerical and administrative tasks that should not be billed.

The City believes that it is most efficient for a single attorney or small group of attorneys to handle a matter from beginning to end. The City expects Special Counsel to strive for continuity in staffing. The City will not pay for downtime or learning time that may result from staffing changes. In addition, the City will not reimburse Special Counsel for any routine training or supervisory time, including time spent at seminars, unless specifically approved in writing in advance. The City will not ordinarily pay for summer associate time and will not reimburse for time spent by temporary or contract attorneys unless approved by the City Attorney, in advance. The City does not expect to be billed and will not pay for non-paralegal time submitted by librarians or secretaries or for billing, filing, docketing, or document clerks, internal messengers/couriers, temporary or clerical support staff, word processors or IT professionals. If Special Counsel's non-attorney staff perform valuable paralegal tasks, the City will regard the time so spent as billable paralegal time.

8.2 Rates

The City will pay for actual services rendered at rates agreed to in advance. Hourly rates will remain fixed for the duration of the representation on a particular matter unless otherwise agreed to by the City Attorney. Billings at a rate that exceeds the approved rate for a particular timekeeper or timekeeper level will not occur. Billing rate increases should not be submitted unless previously discussed and agreed by the City Attorney. Approved increases will be effective for charges incurred as of the date of approval.

8.3 Invoices

For litigation, miscellaneous advice, and non-bond transactional matters, Special Counsel will submit monthly invoices within thirty days of the conclusion of the billing period. All charges must reflect the work performed within the billing period or a reasonable time before the billing period. The City will not pay for services or expenses incurred more than sixty (60) days prior to the date the invoice is submitted. For bond matters, an invoice will be submitted within thirty (30) days of the conclusion of the transaction. Invoices will not be accepted more than ninety (90) days after a matter has been concluded.

Every bill from Special Counsel is deemed a continuing certification by the Special Counsel firm and Relationship Attorney that the legal services and disbursements reflected on the bill are reasonable for the legal matter involved and necessary for the proper provision of legal services in accordance with the Standards. Attorney and paralegal time and disbursements that are not necessary for the cost-effective handling of the legal matter should be omitted. The City will promptly terminate the services of any Special Counsel whose billing practices raise questions about Special Counsel.

8.4 Invoice Format

Each invoice will include the following minimum components:

- Unique invoice number for identification;
- Invoice date;
- Matter name;
- The City's designated matter or Purchase Order number, if any;
- Special Counsel's TIN and matter number;
- Time period when services were performed;
- Timekeeper(s) name or ID and total hours and dollars associated with that timekeeper(s);
- Charge total; and
- Detail of reimbursable expenses and disbursements at actual cost with supporting invoices attached.

8.5 Fees

The City will not reimburse Special Counsel for basic operational support services, which the City deems to be part of Special Counsel's overhead and built into the agreed rate structure. For example, the City generally will not pay for non-paralegal tasks and services by secretaries, word processors, proofreaders, managing clerks, information system technicians, librarians, computer operators, internal messengers, and the like, including any fees or expenses related to overtime, wages, meals, and transportation. Time spent preparing, discussing, or supporting Special Counsel's invoices will not be reimbursed, nor will the City pay for time spent preparing engagement letters, written plans, status reports, or any other reporting tool unless otherwise agreed in advance by the City Attorney. These non-reimbursable tasks include but are not limited to: photocopying, printing, binding or scanning unless the task is an especially large, unique production task; Bates stamping, indexing, collating, coding of documents; filing (including indexing pleadings, opening or closing files, updating or organizing files); preparing transmittal letters or proofs of service; mailing, faxing or emailing; processing of mail or faxes; word processing; proofreading; maintenance of a calendar or tickler system, case tracking; scheduling appointments, events, depositions, conferences, deliveries or travel; data entry, loading or conversion; database administration and maintenance; review and/or processing of vendor, expert or local counsel billing statements; interaction with vendors; investigating potential conflicts; library usage or library staff time; search or licensing fees; filing, serving or hand-delivering documents; and other general clerical and ministerial functions.

8.6 Legal Research

Special Counsel generally is expected to be familiar with the primary substantive law at issue in the matter or task for which the firm was engaged, and the City should not be charged for this type of research. The City also expects to benefit from previously prepared briefs and memoranda, and when such briefs or memoranda exist, will pay only for actual time spent

extracting, updating, or tailoring the same to the City's particular needs. All other anticipated legal research needs should be addressed with the City Attorney. Legal research projects necessary in a particular litigation assignment must be approved in advance by the City Attorney before the research is commenced. If legal research benefits other clients, only the proportionate share of the cost should be billed to the City. The City will pay only for the actual time spent by Special Counsel or other approved timekeeper conducting the research. Fees charged by electronic or other research services, including library fees, Westlaw™, Lexis™, license fees, or other online services, are considered general overhead and are not reimbursable.

8.7 Disbursements and Costs

8.7.1 Generally

The City will reimburse Special Counsel for reasonable, documented and itemized out-of-pocket disbursements and costs incurred on behalf of the City, with the exceptions and limitations set forth in these Standards. Special Counsel's invoices to the City should reflect the actual cost and should not include any markup. All disbursements must be fully itemized with a description sufficient for review.

The City will not reimburse Special Counsel for basic overhead expenses considered part of Special Counsel's cost of doing business. For example, the City will not pay for office supplies, rent/utilities, internet service fees, cellular/mobile/Blackberry® or similar device or smart phone charges, firm conference room charges, temporary office space charges, equipment rental, storage charges, general printing or laser printing, case management or litigation software or systems, computer hardware or software, IT charges including database creation and/or maintenance, subscriptions, books, periodicals or publications, professional association fees, attendance at seminars, CLE programs or conferences, group outings, client entertainment, or interest on outstanding invoices.

8.7.2 Court Reporter Expenses

The City will reimburse Special Counsel for actual costs incurred for court reporters and transcripts. The City may contract with court reporters for a special rate; therefore, Special Counsel will consult with the City Attorney before hiring a court reporter. In the event that the City does not request a specific court reporter, Special Counsel should obtain the lowest possible charge for professional court reporting fees, including any possible volume discounts. The City will pay for only one copy (electronic and hard) of a transcript, if that transcript is necessary at all. Transcription expenses must identify the court reporter and the services provided (i.e., number of transcripts or pages, hard copies or tapes, etc.).

8.7.3 Court Filing Fees

The City will reimburse Special Counsel the actual cost of any approved court filings.

8.7.4 Express Mail and Couriers

Absent approval by the City Attorney, typical express mail and courier fees are considered general overhead and are not reimbursable. The use of secure electronic mail or similar tools is encouraged.

8.7.5 Photocopying

The City will reimburse photocopying charges not exceeding \$0.08 per page for black and white, and \$0.80 for color. Oversized and custom copying projects should be handled using the most economical option. If the nature of a copying project makes an outside copying service more economical and confidentiality is maintained through the execution of the confidentiality agreement attached as Appendix C, the City expects Special Counsel to make those arrangements.

8.7.6 Postage

Typical postage expenses are considered general overhead and are not reimbursable. The use of secure electronic mail is encouraged and preferred.

8.7.7 Telephone and Facsimile Transmissions

Typical telephone charges (including conference call charges) and facsimile transmissions, local and long distance, are considered general overhead and are not reimbursable. Electronic transmission of documents (scanning and emailing) is the preferred method.

8.7.8 Third-Party Services

The approval of the City Attorney must be obtained prior to retaining any third-party service providers, excepting legal process servers and court reporters.

Special Counsel has the responsibility to ensure that there are no conflicts between any third-party vendor and the City. In addition, all third-party vendors must execute the confidentiality agreement attached as Appendix C. The fee and disbursement policies as outlined in these Standards will be made available to, and followed by, third parties. It is Special Counsel's responsibility to confirm that all third-party billings are in compliance with these Standards.

Unless approved otherwise by the City Attorney, invoices from third-party vendors should be paid directly by Special Counsel, incorporated into Special Counsel's invoice to the City, and should include adequate detail. Copies of third-party invoices may be requested by the City and should be retained in accordance with Internal Revenue Service ("IRS") regulations and guidelines. There may be times when it would be more appropriate for the City to pay a third-party vendor directly. If so, and after consultation with and approval by the City Attorney, the invoice should be directed to the City Attorney or the City Attorney's legal support manager for processing.

8.8 Travel

Alternatives to travel such as conference calls or videoconference are strongly encouraged and should be used by Special Counsel whenever practical. All travel expenses and travel time must be clearly identified on the invoice in a separate time entry, documenting that it was economically done.

8.9 Expense Reimbursement

To ensure compliance with the City's reimbursement policies, all firms will require itemization of out-of-pocket expenses such as airline tickets, meals, and hotel bills, including original receipts before making reimbursement to any attorney, employee or third party. Travel and meal expenses and receipts may be reviewed and will be retained by Special Counsel in accordance with applicable IRS regulations and guidelines. Personal travel expenses will not be reimbursed.

9. MEDIA

Special Counsel ***will not*** make any statements to the media on behalf of the City or relating to City matters unless specifically authorized to do so by the City Attorney. Special Counsel may be asked on occasion to assist in the development of media releases or responses, in collaboration with the City's Communications Manager and the City Attorney. All media inquiries must be immediately reported to the City Attorney. The City does not permit Special Counsel to advertise or promote its relationship with the City, other than to list the City as a representative client in the ordinary course.

10. GRATUITIES

City employees and representatives are prohibited from accepting any gift, favor, service, or other thing of value related in any way to City employee's or representative's official duties. Special Counsel, although well intended, should not send or give to the City Attorney or city staff any such items or any opportunity that is other than de minimus.

APPENDIX A
ACCEPTANCE OF THE CITY OF STAUNTON'S
SPECIAL COUNSEL STANDARDS

I have reviewed the City of Staunton's Special Counsel Standards and, as the Relationship Attorney, acknowledge acceptance of the terms. I am authorized to sign on behalf of my firm. A copy of these Standards will be provided to all staff including our billing department to ensure compliance. I understand that my firm and I also are responsible for ensuring that any vendors engaged on behalf of the City of Staunton will comply with these Standards.

Firm _____

By _____

Title _____

Date _____

APPENDIX B
ENGAGEMENT LETTER

[City Attorney Letterhead]

[Insert Date]

VIA E-MAIL

[Insert Name
Insert Address
Insert City, State Zip]

Re: Special Counsel Engagement

Dear _____:

Please allow me to follow up with you to confirm the City's engagement of you and your law firm as special counsel for the City. I look forward to working with you. I ask that you initial this engagement letter, as well, and return it to me in pdf.

The engagement is related to the matter/various matters concerning _____. The special counsel engagement is undertaken within the framework of the Special Counsel Standards (Standards), which are incorporated by reference. I previously provided you with a copy of the Standards.

You are designated as the Relationship Attorney for this engagement. In this role, you will be communicating and coordinating directly with me and with the City Attorney's legal support manager. From time to time, I will ask that person to communicate with you and such communications should be regarded as communications on my behalf.

I authorize communication by e-mail, including e-mail that includes transmittal of document and information as attachments. If I prefer that we not communicate by e-mail in some particular respect, I will let you know. Still, however, I remind you and your colleagues and staff that the City of Staunton is a public body under the Virginia Freedom of Information Act (FOIA), and it may be advisable to manage email communications so that we are not unnecessarily generating more public records that may have to be found, searched, reviewed, and redacted in response to a FOIA request. On balance, with sensitive aspects, I would prefer to have telephone or in-person communications, which also should help promote understanding on topics which argue for contemporaneous interaction.

Sincerely,

ENGAGEMENT ACCEPTED:

APPENDIX C
CONFIDENTIALITY AGREEMENT
Confidentiality Agreement

_____(Subcontractor), as an independent contractor of the law firm retained as Special Counsel by the City of Staunton (City), hereby acknowledges and agrees as follows:

1. All documents and data, including but not limited to financial, statistical, personnel, customer, and/or technical documents, owned or supplied by the City to the Subcontractor (“Documents and Data”) will be treated as confidential. The Subcontractor will take all necessary and reasonable precautions to ensure that the City’s Documents and Data are safeguarded. Use of the Documents and Data is strictly limited to that use necessary to complete the scope of work agreed upon, which may include disclosure to employees, officers or agents of any subcontractor assisting with the scope of work. Any other use, and any sale or offering of the Documents and Data in any form by the Subcontractor, or any individual or entity in the Subcontractor’s charge or employ, will be considered a violation of this Confidentiality Agreement and may result in contract termination of the agreement between Subcontractor and the law firm retained by the City, and the Subcontractor’s suspension or debarment from City contracting. In addition, such conduct may be reported to the Virginia Attorney General and others for possible review.

2. Subcontractor will be responsible to ensure that all individuals or entities in the Subcontractor’s charge or employ adhere to this Confidentiality Agreement. A breach of confidentiality by any individual or entity in the Subcontractor’s charge or employ will be considered a violation of this Confidentiality Agreement by the Subcontractor.

3. In the event that Subcontractor or any individual or entity in the Subcontractor’s charge or employ receives a subpoena, demand, or other request for any of the City’s documents or data, Subcontractor will promptly notify the City and will not turn over any of the City’s documents or data without the City’s express, prior written approval or without the City having an opportunity to review.

4. The Subcontractor will comply with all applicable State and Federal laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other event requiring notification.

5. Upon termination of this Confidentiality Agreement the Subcontractor will return or erase, destroy, and render unreadable all Subcontractor copies of City Documents and Data, both physical and electronic, and certify in writing that these actions have been complete within 30 days of the termination of this Confidentiality Agreement or within 14 days of the request of an agent of the City, whichever comes first.

6. This Confidentiality Agreement will terminate upon the Subcontractor's termination of the contract between the law firm retained by the City and Subcontractor or upon completion of the scope of work related to the City.

7. This Confidentiality Agreement is intended to protect the interests of the City and of Special Counsel.

Subcontractor _____

By _____

Title _____

Date _____