



Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 Special Counsel shall not hire or otherwise incur any  
2 obligation to pay other counsel, specialists, consultants, or  
3 experts for services in connection with the Matter without the  
4 prior written approval of the City Attorney or designee.

5 **4. Fee.** City shall pay Special Counsel at the hourly  
6 rates in paragraph 3 and reimburse costs as further described  
7 herein and in the "Guidelines" also attached hereto, in an amount  
8 not to exceed One Hundred Thousand Dollars (\$100,000). These  
9 amounts may be adjusted by vote of the Board of Harbor Commissioner  
10 upon recommendation by the Office of the City Attorney. Approval  
11 by the City Council shall not be required for any funding  
12 adjustment.

13 **5. Billing.**

14 5.1 Special Counsel shall keep a record of time  
15 spent on the matter in increments of one-tenth (.1) of an  
16 hour.

17 5.2 Each task shall be distinctly and completely  
18 identified; the City will not pay invoices which contain block  
19 billing. The billing entry must contain the name or initials  
20 of the individual performing the task, the nature of the task,  
21 the date it was performed, and the length of time it took

22 5.3 The City will not pay for the use of attorneys  
23 and paralegals to perform Services which are secretarial or  
24 administrative.

25 5.4 The City reserves the right to audit all  
26 invoices. The City will not pay for costs incurred by Special  
27 Counsel in preparing an invoice, correcting it, or  
28 resubmitting it.

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1           5.5 Special Counsel shall submit invoices no later  
2 than the last day of the month following the month in which  
3 Services were performed and actual costs incurred. If Special  
4 Counsel submits invoices after said date, then the invoice(s)  
5 may be subject to a discount of ten percent (10%) for each  
6 month or portion thereof that the invoice is not timely  
7 submitted.

8           **6. Costs.** The City will reimburse Special Counsel for  
9 the reasonable costs incurred by Special Counsel as a result of its  
10 representation of the City in the Matter, in accordance with the  
11 Guidelines. Costs shall be actual, without the addition of  
12 administrative or overhead charges, and must be documented. The  
13 City will not pay for costs that do not contain supporting  
14 documentation satisfactory to the City Attorney, or designee.

15           **7. Term.** The term of this Agreement shall be deemed to  
16 have begun at 12:01 a.m. on March 1, 2006, and shall end upon  
17 completion of the services described in paragraph 2 or earlier  
18 termination upon ten (10) days' prior notice either from City to  
19 Special Counsel or from Special Counsel to City.

20           **8. Indemnification.** Special Counsel shall defend,  
21 indemnify, hold, protect and save harmless the City of Long Beach,  
22 the Board of Harbor Commissioners, and their officials,  
23 commissioners, employees, and agents ("indemnified parties") from  
24 and against any and all actions, suits, proceedings, claims,  
25 demands, damages, losses, liens, costs, expenses or liabilities, of  
26 any kind or nature whatsoever ("claims") which may be brought,  
27 made, filed against, imposed upon or sustained by the indemnified  
28 parties, or any of them, alleging (a) injury to or death of persons

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1 or damage to property, including property owned by or under the  
2 care and custody of City, and (b) that such injury, death or damage  
3 arises from or is attributable to or caused by the negligence or  
4 willful misconduct of Special Counsel, its officers, agents or  
5 employees, in connection with or pertaining to this contract. City  
6 shall notify Special Counsel of any such claim, shall tender its  
7 defense to Special Counsel, and assist Special Counsel, as may be  
8 reasonably requested, in such defense. Upon such notification and  
9 tender, Special Counsel shall have independent duties to defend  
10 such claim, and to indemnify the indemnified parties except to the  
11 extent that such injury, death or damage is determined by a court  
12 of competent jurisdiction to have been caused by the negligence or  
13 willful misconduct of the indemnified parties or any of them.  
14 Payment of a claim shall not be a condition precedent to an  
15 indemnified party's right to defense and indemnity.

16 **9. Insurance.** As a condition precedent to the  
17 effectiveness of this Agreement, and without limiting Special  
18 Counsel's obligations of indemnity set forth above, Special  
19 Counsel, at its cost, shall procure and maintain in full force and  
20 effect during the term of this Agreement, and at such other times  
21 as may be required under "claims-made" insurance if such form of  
22 insurance is provided, the following types and levels of insurance:

- 23 (a) professional errors and omissions liability  
24 insurance, with a limit of not less than \$1,000,000 per claim;
- 25 (b) commercial general liability insurance with  
26 coverage at least as broad as Insurance Services Office  
27 Commercial General Liability Form CG0001, with a per  
28 occurrence limit of not less than \$1,000,000 and, if written

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1 with an annual aggregate, an aggregate limit of not less than  
2 \$2,000,000;

3 (c) automobile liability insurance with coverage at  
4 least as broad as Insurance Services Office Form CA0001  
5 covering automobile liability code 1 (any auto), with a per  
6 accident limit of not less than \$1,000,000;

7 Each such policy shall be from a company or  
8 companies with a current A.M. Best's rating of no less than A:VII  
9 and authorized to do business in the State of California, or  
10 otherwise allowed to place insurance through surplus line brokers  
11 under applicable provisions of the California Insurance Code or any  
12 federal law. Any deductible or self-insured provision must be  
13 approved in writing by Executive Director of the Harbor Department  
14 and shall protect City, its officials, employees and agents in the  
15 same manner and to the same extent as they would have been  
16 protected had the insurance not contained such provision. The  
17 deductible or self-insured amount shall be shown on any evidence of  
18 insurance provided to City, and City reserves the right to limit  
19 said amount and to review Special Counsel's financial statements if  
20 the amount exceeds a level acceptable to City.

21 Each such policy shall be endorsed to provide that  
22 the policy shall not be cancelled or coverage materially reduced  
23 until a thirty-day (30) written notice of cancellation has been  
24 served upon the Executive Director by registered or certified mail.

25 In addition, the policy or policies required under  
26 paragraphs (b) and (c) above shall be endorsed to provide as  
27 follows:

28 (i) That the indemnified parties shall be

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1 additional insureds with regard to liability and defense of  
2 claims arising from the operations, products, and activities  
3 performed by or on behalf of the named insured.

4 (ii) That such insurance is primary and any other  
5 insurance, deductible, retention or self-insurance maintained  
6 by the indemnified parties shall not contribute with such  
7 primary insurance.

8 (iii) That in the event of one insured incurring  
9 liability to any other insured, the policy shall cover the  
10 insured against whom claim is or may be made in the same  
11 manner as if separate policies had been issued to each  
12 insured, except that the limits of insurance shall not be  
13 increased thereby.

14 (iv) That the coverage provided therein shall apply  
15 to the obligations assumed by Special Counsel under the  
16 indemnity provisions of this Agreement, unless the policy or  
17 policies contain a blanket form of contractual liability  
18 coverage.

19 (v) That any failure by the named insured to comply  
20 with reporting provisions of the policy or policies or  
21 breaches or violations of warranties shall not affect coverage  
22 provided to the indemnified parties.

23 If any of the required insurance is provided on a  
24 "claims-made" basis, any "prior acts" coverage or "retroactive  
25 date" on such insurance and all subsequent insurance shall be as of  
26 the first date of the term of this Agreement. Upon expiration or  
27 termination of coverage of required insurance, Special Counsel  
28 shall procure and submit to City evidence of "tail" coverage or an

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1 extended reporting coverage period endorsement.

2 Special Counsel shall deliver either certified  
3 copies of the required policies or endorsements on forms approved  
4 by the City ("evidence of insurance") to the Executive Director for  
5 approval as to sufficiency and to the City Attorney for approval as  
6 to form. At least fifteen (15) days prior to the expiration of any  
7 such policy, evidence of insurance showing that such insurance  
8 coverage has been renewed or extended shall be filed with the  
9 Executive Director. If such coverage is cancelled or reduced,  
10 Special Counsel shall, within ten (10) days after receipt of  
11 written notice of such cancellation or reduction of coverage, file  
12 with the Executive Director evidence of insurance showing that the  
13 required insurance has been reinstated or has been provided through  
14 another insurance company or companies. Special Counsel agrees to  
15 suspend and cease all operations hereunder during such period of  
16 time as the required insurance coverage is not in effect and  
17 evidence of insurance has not been furnished to the City. City  
18 shall have the right to withhold any payment due Special Counsel  
19 until Special Counsel has fully complied with the insurance  
20 provisions of this Agreement.

21 **10. Conflict of Interest.** Special Counsel, by executing  
22 this Agreement, certifies that, at the time Special Counsel  
23 executes this Agreement and for the duration of this Agreement,  
24 Special Counsel does not have and will not perform services for any  
25 other client which would create a conflict as between the interests  
26 of the City hereunder and the interests of such other client,  
27 subject to written waiver by the City.

28 **11. Nondiscrimination.** In connection with performance

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1 of Services and subject to applicable rules and regulations,  
2 Special Counsel shall not discriminate on the basis of race,  
3 religion, national origin, color, age, sex, sexual orientation,  
4 AIDS, HIV status, handicap, disability, or Vietnam Era veteran  
5 status. It is the policy of the City to encourage the  
6 participation of Minority Business Enterprises and Women-owned  
7 Business Enterprises and the City urges Special Counsel to do  
8 likewise.

9 **12. Miscellaneous.**

10 12.1 This Agreement shall not be amended, nor any  
11 provision or breach hereof waived except in writing signed by  
12 the parties which refers to this Agreement.

13 12.2 This Agreement shall be governed by and  
14 construed pursuant to the laws of the State of California.  
15 Special Counsel shall comply with all laws, ordinances, rules,  
16 and regulations covering performance of Services.

17 12.3 This Agreement, including the Guidelines and  
18 exhibits, if any, constitutes the entire understanding between  
19 the parties and supersedes all other agreements, oral or  
20 written, with respect to the Services and the Matter.

21 12.4 If there is any inconsistency or ambiguity  
22 between this Agreement, the Guidelines, or the Addendum, this  
23 Agreement shall control.

24 12.5 If there is any legal proceeding between the  
25 parties to enforce or interpret this Agreement or to protect  
26 or establish any rights or remedies hereunder, the prevailing  
27 party shall be entitled to its costs and expenses, including  
28 reasonable attorney's fees and court costs (including



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appeals).

12.6 The acceptance of Services or payment of money by the City shall not operate as a waiver of any provision of this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

12.7 This Agreement is intended by the parties to benefit themselves only and is not in any way intended or entered for the purpose of creating any benefit or right for any person or entity that is not a party to this Agreement.

12.8 Special Counsel acknowledges and agrees that:  
(i) City will not withhold taxes of any kind from Special Counsel's compensation; (ii) City will not secure workers' compensation or pay unemployment insurance to, for or on Special Counsel's behalf; and (iii) City will not provide and Special Counsel is not entitled to any of the usual and customary rights, benefits or privileges of City employees.

**13. Notice.** Any notices to be given under this contract shall be given in writing. Such notices may be served by personal delivery, facsimile transmission or by first class regular mail, postage prepaid. Any such notice, when served by mail, shall be effective two (2) calendar days after the date of mailing of the same, and when served by facsimile transmission or personal delivery shall be effective upon receipt. For the purposes hereof, the address of City, and the proper person to receive any such notices on its behalf, is: Office of the City Attorney, Attention: Dominic Holzhaus, Principal Deputy City Attorney, 333 West Ocean Boulevard, Long Beach, California 90802, FAX number (562) 570-2232;

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1 and the address and FAX number of Special Counsel as indicated  
2 above.

3 IN WITNESS WHEREOF, the parties have caused this document  
4 to be executed with all of the formalities required by law as of  
5 the date first stated above.

6 MILLER, BALIS & O'NEIL, a  
7 Professional Corporation

8 5/23, 2006

9 By: William T. Miller  
10 Name: William T. Miller  
11 Title: Pres

12 "Special Counsel"

13 CITY OF LONG BEACH, a municipal  
14 corporation

15 6/22, 2006

16 By: Christine F. Shippy ASSISTANT  
17 City Manager

18 "City"

19 EXECUTED PURSUANT  
20 TO SECTION 301 OF  
21 THE CITY CHARTER.

22 This Agreement for Legal Services is hereby approved as  
23 to form on 6/20, 2006.

24 ROBERT E. SHANNON, City Attorney

25 By: [Signature]  
26 Charles M. Gale, Deputy

27 CMG:rjr 04/26/06 #06-01493  
28 L:\APPS\CtyLaw32\WPDOS\027\004\00088635.WPD

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

- personally known to me
- (or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

personally known to me

(or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

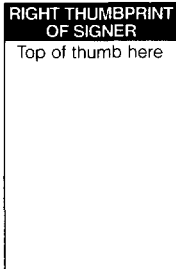
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

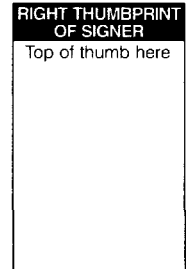
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

1 Exhibit "A"

2  
3 GUIDELINES FOR BILLING

4 In addition to the provisions stated in the Agreement,  
5 the following guidelines for billing apply:

6 1. The City expects each individual working on the  
7 Matter to have the necessary experience to perform the Services  
8 required to protect or pursue the City's interests in the Matter in  
9 a cost effective manner.

10 2. The City expects Special Counsel to select the  
11 individual most suitable for the task required and the specific  
12 needs of the Matter, and to use the maximum efficiencies available.  
13 Billings for services performed by the inappropriate level of  
14 personnel will be reduced by the City based on rate adjustments for  
15 the appropriate level of personnel.

16 3. The City Attorney or designee may request a written  
17 budget and timeline for the Matter. The budget shall include all  
18 projected fees and costs to be incurred by Special Counsel for the  
19 Matter, commencing on the date that Special Counsel receives the  
20 request. The budget and timeline shall include the specific tasks  
21 to be performed (including such things as discovery and motions for  
22 trial, preparation of documents for transactional services, and  
23 anticipated research and investigations). Special Counsel shall  
24 identify the projected total hours that will be billed and who will  
25 be performing those hours of service, plus fees and costs for each  
26 task. The budget and timeline shall be a good faith estimate and  
27 as complete as possible. Any deviation from the budget and any  
28 deviation over 10% on any task identified in the budget must be  
discussed in advance with the City Attorney, or designee, and the  
billing related to that task is subject to adjustment so as to  
conform to the budget.

29 In addition, the City Attorney or designee may request a  
30 written budget and timeline similar to the one described above, but  
31 relating specifically to one or more tasks necessary to the Matter.

32 If the billings of Special Counsel are approaching the  
33 "not to exceed" amount shown in Section 3 of the Agreement, then  
34 Special Counsel shall submit, in writing to the City Attorney or  
35 designee, the reasons why additional funds will be required to  
36 complete the Services. Special Counsel is cautioned that the City  
37 cannot pay invoices which reflect fees over the "not to exceed"  
38 amount in Section 3 of the Agreement.

39 4. The City will not pay for unnecessary review of  
40 texts, codes, rules of court, or other fundamental references. The  
41 City will pay the hourly rate for specific legal research which is  
42 unique to the Matter, assuming that Special Counsel has used  
43 maximum efficiencies and that Special Counsel has not already  
44 performed research in the same or similar areas of law.

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1           5. The City acknowledges the benefit of communications  
2 between attorneys in the firm. The City does, however, expect that  
3 intra-office conferences will only be held as needed, and will be  
4 kept to a minimum. Intra-office conferences shall be for the  
5 purpose of discussing strategy and legal issues which directly  
6 further the Matter. The City will not pay for conferences which  
7 are supervisory or instructional (including conferences regarding  
8 case management). Any invoice which lists an intra-office  
9 conference that exceeds these guidelines must contain a full  
10 explanation and is subject to reduction by the City. The City will  
11 not pay for "team meetings" and the City will scrutinize all  
12 intra-office conferences for "value added" to the Matter by the  
13 intra-office conference, for the number of individuals attending  
14 the intra-office conference, the length of the conference, the  
15 subject(s) discussed at the conference and who participated in it  
16 and will, in the City's sole discretion, determine if such value  
17 was added.

18           6. The City will not pay for local telephone calls;  
19 incoming facsimiles; time spent on filing, calendaring, indexing  
20 pleadings, conferences with Clerks of Court or court reporters;  
21 proofreading; re-drafting due to substandard work; time billed by  
22 summer associates; time for more than one individual at a trial,  
23 hearing, court appearance, arbitration, mediation, deposition,  
24 third party meeting, conference call or similar event (unless  
25 approved in advance by the City); opening, closing or organizing  
26 files; or other similar tasks.

27           7. Vague billing which does not contain sufficient  
28 information to allow the City's reviewer of the invoice to  
determine the nature of the task, the reason for the task and the  
individual performing the task is subject to reduction by the City.  
Examples of vague billing include but are not limited to the  
following: Attention to Matter, Review case and issues, Conference,  
Review correspondence, Arrangements, Telephone call, Discovery,  
Trial Preparation, Meeting, Update strategy, Motion work, Work on  
case or project, Pleadings, Work on file or discovery, Prepare for  
"xxxx," Review documents, Legal Research or analysis.

          8. All Services billed by attorneys and paralegals must  
be actual legal services requiring the expertise of a legal  
provider. The City will not pay for more than eight (8) hours of  
Services per day without a detailed explanation of the need for  
time over eight hours and may reduce the invoice if the explanation  
is unsatisfactory, in the City's sole discretion.

          9. The City will reimburse for facsimiles sent by but  
not received by Special Counsel and photocopies made at a rate not  
to exceed \$.12 per page; the number of pages of facsimiles and to  
whom they were sent, and the number of pages of photocopies made  
must appear on the invoice. Special Counsel shall limit the making  
of photocopies and the sending of facsimiles. The City will  
reimburse actual costs for computerized legal research if it is  
reasonable and necessary;

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1 however, these charges are subject to review by the City.

2 10. The City will not reimburse for overtime, word  
3 processing (document production), supplies, anything identified on  
4 an invoice as "miscellaneous," or any other unidentified charges.

5 11. Special Counsel shall normally use the U.S. Mail and  
6 regular attorney services to send and to file papers and other  
7 materials. The City reserves the right to reduce excessive charges  
8 for messengers and Federal Express or other similar services which  
9 are not fully explained or which are not necessary, in the City's  
10 determination.

11 12. A. The City will reimburse travel costs of Special  
12 Counsel only as described herein. Travel costs not addressed in  
13 these Guidelines are not reimbursable. Travel costs must be  
14 reasonable. The City will not reimburse for travel by more than  
15 one person of Special Counsel, unless approved in writing by the  
16 City Attorney or designee in advance of such travel. The City will  
17 not reimburse for excess costs caused by an indirect route chosen  
18 for Special Counsel's personal reasons

19 B. As used in these Guidelines, "local travel" means  
20 travel that is 100 miles or less from the office of Special Counsel  
21 or from his/her home. "Extended travel" means travel that is more  
22 than 100 miles from the office of Special Counsel or from his/her  
23 home.

24 C. The City will not reimburse for local travel.  
25 However, the City will reimburse for the actual cost of parking  
26 that is necessitated by local travel. The City will not reimburse  
27 for meals in connection with local travel. While Special Counsel  
28 is on local travel, the City will pay fifty percent (50%) of the  
hourly rate of Special Counsel.

D. The City must approve all extended travel in advance.  
The City will reimburse fifty percent (50%) of the actual costs of  
extended travel, unless Special Counsel can substantiate the need  
for full reimbursement. Special Counsel shall use its best efforts  
to make airline reservations far enough in advance to take  
advantage of reduced air fares and shall take advantage of other  
promotional air fares that reduce costs. In any case, travel by  
air shall be at economy, coach, or other lower fare. The City will  
not reimburse for travel insurance.

Special Counsel should use a rental car while on extended  
travel only when necessary and when the cost of a rental car will  
be less than other forms of ground transportation. If the use of  
a rental car meets the preceding criteria, then the City will  
reimburse for a compact vehicle for one person, a mid-sized vehicle  
for two persons, and a standard size vehicle for three or more  
persons. The City will not reimburse for luxury vehicles, vans, or  
4x4 vehicles.

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The City will reimburse Special Counsel, while on extended travel, for the reasonable, actual costs for meals, excluding the cost of alcoholic beverages, and for lodging at hotels which are moderately priced for the locale, but will not reimburse for laundry or movies.

E. Special Counsel shall submit a travel expense report on the City's form after completing extended travel. Special Counsel shall submit receipts or other evidence of payment relating to each item for which Special Counsel seeks reimbursement.

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