

## MODIFICATION TO SPECIAL LEGAL COUNSEL AGREEMENT

This contract modification is made and entered into by and between Isaac, Wiles, Burkholder & Teetor, LLC (hereinafter "Special Legal Counsel") with offices located at 2 Miranova Place, Suite 700, Columbus, Ohio 43215 and the Columbus City Attorney's Office (hereinafter City Attorney).

WITNESSETH:

WHEREAS, the City Attorney is in need of a special legal counsel contract modification to continue assistance in representation and advising the Helicopter Unit of the Columbus Division of Police; and

WHEREAS, Special Legal Counsel has the necessary expertise in aviation matters to provide this assistance; and

WHEREAS, the parties on November 25, 2013 did execute contract number DE099138 for \$15,000.00 and Contract number DE101176 for \$4,539.70 on June 6, 2014; and

WHEREAS, it is in the best interest of both the City and the Contractor to execute a modification to the original contract with additional funds of \$75,460.30; and

WHEREAS, the total amount to the Special Legal Counsel including this modification shall not exceed \$95,000.00 for this project.

NOW, THEREFORE, in consideration of the mutual promises as hereinafter set forth, the parties agree as follows:

### ENTIRE AGREEMENT

This contract sets forth the entire Agreement between the parties with respect to the subject matter hereof. Understandings, agreements, representations, or warranties not contained in this Contract, or as written amendment hereto, shall not be binding on either party. Except as provided herein, no alteration of any terms, conditions, delivery, price, quality, or specifications of this Contract shall be binding on either party without the written consent of both parties.

#### 1. Contract Term

The term of this Contract is from the date of execution until such time as the work identified in the scope of work is completed. Subsequent terms are contingent upon mutual agreement of the parties, certification of available funds by the City Auditor, and approval by City Council if such amount exceeds \$ 95,000.00.

2. Maximum Obligation

The maximum amount to be paid under any invoice submitted during the term of this Contract shall not exceed \$ 95,000.00. The agreed upon hourly billing rate is \$200 per hour for attorneys and \$90 for paralegals. Special Legal Counsel shall not charge in excess of those hourly rates during the contract term.

3. Scope of Services

In exchange for the monies paid by the City Attorney pursuant to this Contract, Special Legal Counsel agrees to provide legal advice in consultation with the City Attorney upon request to the Helicopter Unit of the Columbus Division of Police.

4. Equal Opportunity Clause

Special Legal Counsel agrees to abide by all of the terms, conditions and requirements set forth in Columbus City Code Section 3909.01, Equal Opportunity Clause. Failure of or refusal to comply with the provisions of Article I, Title 39, may result in cancellation of this Contract. (Ordinance 2550-93.)

5. Taxes

Withholding City Income Taxes

Pursuant to Section 361.34 of the Columbus City Codes, 1959, Special Legal Counsel hereby further agrees to withhold all City Income Taxes due or payable under the provisions of Chapter 361 for wages, salaries, and commissions paid to it or its employees and further agrees that any of its Subcontractors shall be required to agree to withhold any such City Income Taxes due under said Chapter for services performed under this Contract.

Federal or State Taxes

Federal or State taxes are not to be included on invoices for the described services. The City will provide an exemption certificate upon request.

6. City's Contract Administrator

Tim Mangan has been designated to serve as the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. Tim Mangan will manage the Contract on behalf of the City Attorney and will be the principal point of contact for the City concerning Special Legal Counsel's performance under this Contract.

7. Contractor as an Independent Contractor

Special Legal Counsel shall be and shall remain an independent contractor with respect to all services performed hereunder and it agrees to and does hereby accept full and exclusive liability of any and all contributions or taxes for Social Security, unemployment insurance or old age retirement benefits, pensions or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries or other remunerations paid to the Contractor or persons employed by Special Legal Counsel for work performed under the terms of this Contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now, or hereafter may be, issued or promulgated under said respective laws.

Special Legal Counsel understands and agrees that this Contract in no way establishes an employer/employee relationship between it and the City, nor will the Agreement now or in the future entitle Special Legal Counsel or its employees to claim an employer/employee relationship with the City for any purpose whatsoever.

8. Contract Administration

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective if any only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

To City Attorney at:           Tim Mangan  
  Chief Litigation Attorney  
  Columbus City Attorney's Office  
  77 North Front Street, 4<sup>th</sup> Floor  
  Columbus, Ohio 43215

To Special Legal Counsel at: Jay B. Eggspuehler  
  Isaac, Wiles, Burkholder & Teetor, LLC  
  2 Miranova Place, Suite 700  
  Columbus, Ohio 43215

9. Conflict of Interest

No officer or employee of the City Attorney or its designees or agents, and no other public official who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any Contract or subcontract, or the proceeds thereof, for work to be performed in connection with this Agreement.

Any such person, who prior to the execution of this Contract, acquires any such incompatible or conflicting personal interest, or after the effective date of this Contract involuntarily or voluntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his/her interest to the City in writing. Thereafter, he/she shall not participate in any action affecting the work under this Contract, unless the City determines that in light of the personal interest disclosed, his/her participation in any such action would not be contrary to the public interest.

10. Applicable law, Remedies

This Contract shall be governed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Contractor arising out of or relating to this Contract or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

11. Payment

Fees shall be paid for services rendered following: (1) the City Attorney's receipt of an itemized invoice, which designates the specific applicable charges including hourly rates, and (2) issuance of a certified purchase order. The City Attorney will not be subject to any late payment charges. Rates shall be firm during the term of this Contract. The City Attorney will process correctly documented invoices for payment and the Contractor should receive payment for such invoice within 30 days from receipt by the City Attorney.

12. Contract Termination

Termination for Default

If either the City Attorney or Special Legal Counsel violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party shall give the other party written notice of a proposed correction to such failure or violation. The responsible party will correct the violation or failure within 30 calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to termination shall be at the sole discretion of the aggrieved party. If it is determined for any reason the failure to perform is without the defaulting party's control, fault or negligence, the termination shall be deemed to be a Termination for Convenience. This section shall not apply to any failure to perform that result from the willful or negligent acts or omissions of the aggrieved party.

## Termination for Convenience

When it is in the best interests of the City Attorney, the City Attorney may terminate this Contract, in whole or in part, by providing 14 calendar days or other appropriate length of time written notice to Special Legal Counsel prior to the effective date of termination. If this Contract is so terminated, the City Attorney is liable only for payments required by the terms of this Contract for services performed prior to the effective date of termination. If this Contract is so terminated, the City Attorney is liable only for payments required by the terms of this Contract for services received and accepted by the City Attorney.

### 13. Modifications

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the City Attorney and Special Legal Counsel and approved by the appropriate City authorities.

### 14. Nonexclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under the law.

### 15. Survivorship

All services executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices, discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense in context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

### 16. Ownership of Work Product

Unless otherwise provided, data that originates from this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the City. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions, or source code and object code. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data which is delivered under this Contract, but which does not originate therefrom, shall be transferred to the City Attorney with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided, that such license shall be limited to the extent which Special Legal Counsel has a right to grant such a license. Special Legal Counsel shall exert all reasonable effort to advise the City Attorney at the

time of delivery of data furnished under this Contract, of all known or potential infringements for privacy or other intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. The City Attorney shall have the right to modify or remove any restrictive markings placed upon the data by Special Legal Counsel.

Special Legal Counsel shall not use or in any manner disseminate such work product or program to any third party without the prior written permission of the City Attorney.

17. Review of Contractor's Records

Special Legal Counsel shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records as required by law. Records involving matters in litigation related to this Contract shall be kept as required by law including appeals. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying or audit by personnel so authorized by the City Attorney's Contract Administrator and/or the City Auditor and state or federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Franklin County. . During the required time period delivery of and access to these items will be at no cost to the City Attorney. It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Contractor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from the City Attorney's review unless the cost, or any other material issue under this Contract, is calculated or derived from these factors.

18. Save Harmless

Special Legal Counsel shall protect, indemnify and save the City harmless from and against any damage, cost or liability, including reasonable attorney's fees, resulting from claim by third parties for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Special Legal Counsel, its officers, employees, agents or subcontractors.

19. Force Majeure

Neither party will be liable for failure to perform its obligations hereunder if such failure results from force majeure, act of God, refusal of any license or consent of any act of any national, federal, state or local governmental authority or any department, agency or representative

thereof, fire, explosion, accident, industrial dispute, act of war, riot, epidemic or other natural disaster or anything beyond either party's reasonable control.

20. Severability

If any term or condition of this Contract or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

21. Waiver

Waiver of any breach, term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

22. Contractor's Proprietary Information

Special Legal Counsel acknowledges that the City is subject to R.C. 149.43, the Ohio Public Records Law, and that this Contract shall be a public record as defined in this statute.

23. Assignment

This Contract may not be assigned or otherwise transferred to other by Special Legal Counsel without the prior written consent of the City Attorney.

24. Authority to Bind

The signatories to this Contract represent that they have the authority to bind themselves and their respective organizations to this Contract.

25. Campaign Contributions

Special Legal Counsel hereby certifies the following: that it is familiar with Ohio Revised Code ("O.R.C.") Section 3517.13; that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of that Section; that it is eligible for this contract under the law and will remain in compliance with O.R.C. Section 3517.13 for the duration of this contract and for one year thereafter

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year written below.

By: \_\_\_\_\_  
Isaac, Wiles, Burkholder, & Teetor, LLC

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Richard C. Pfeiffer, Jr.  
Columbus City Attorney

\_\_\_\_\_  
Date