

**APPOINTMENT AS SPECIAL ASSISTANT ATTORNEY GENERAL  
TERMS AND CONDITIONS  
Nossaman Guthner Knox & Elliott, LLP**

**REASON FOR APPOINTMENT:**

The Washington State Department of Transportation (WSDOT) in cooperation with the Oregon Department of Transportation (ODOT) has requested the appointment of a Special Assistant Attorney General (SAAG) to assist the Washington State Attorney General's Office (AGO) and the Oregon Department of Justice (DOJ) in providing legal advice on innovative financing and project delivery for the bi-state Columbia River Crossing Project. The Attorney General's Office concurs with this request.

Based upon a competitive selection process, Nossaman Guthner Knox & Elliott, LLP (the Firm) is one of the firms selected for this assignment.

While the Firm will be providing legal services jointly to both WSDOT and ODOT, and be directed in its tasks jointly by both the AGO and the DOJ, the Firm will be appointed Special Assistant Attorneys General directly by and for each state individually under this AGO SAAG Agreement and a concurrent DOJ SAAG Agreement.

The Washington State Attorney General's Office (AGO), 7141 Cleanwater Drive, P.O. Box 40113, Olympia, Washington 98504-0113, Washington State Department of Transportation, and Nossaman Guthner Knox & Elliot, 445 S. Figueroa Street, 31<sup>st</sup> Floor, Los Angeles, California, 90071, (213) 612-7842 Phone, (213) 612-7801 Fax,

HEREBY AGREE to the following terms and conditions regarding this appointment as Special Assistant Attorney General:

**1. SERVICES PROVIDED**

The Firm will provide assistance to WSDOT and ODOT at the direction of the AGO and DOJ, on a task order basis, in the development and implementation of innovative funding, financing, institutional ownership, and project delivery options for the CRC Project. All tasks shall be performed at the joint direction of the AGO and DOJ and work product shall be delivered concurrently to both agencies.

**2. COMPENSATION AND PAYMENT**

- A. Consideration.** Subject to the terms and conditions of this Agreement, compensation will be paid by WSDOT and ODOT. Compensation shall be in accordance with the rate schedule in Sections 2 B and C below for Services rendered, plus expenses up to a total of **\$500,000.00** (the "Maximum Compensation") under the AGO and DOJ SAAG Agreements

combined. The Firm acknowledges and agrees that WSDOT and ODOT are the primary sources of funds for all payment for services and reimbursements provided and shall pay the Firm for only those services performed after the appointment date and before the expiration or termination of this agreement. If the maximum compensation is increased by amendment of this Agreement, the amendment must be fully effective before the Firm performs services subject to the amendment.

*BY*

- B. Professional Fees. The Firm's fees will be <sup>generally</sup> no higher than its customary and reasonable rates offered to comparable public sector clients for work of a comparable nature. The Firm's fees for 2006 for lawyers identified as likely to provide services are the following, subject to increases annually on January 1 of each year:

ATTORNEY/LEGAL ASSISTANT	HOURLY RATE
Geoffrey Yarema	\$495 per hour
Fredric Kessler	\$470 per hour
Brian Papernik	\$410 per hour
Barney Allison	\$450 per hour
Tom Long	\$400 per hour
Anne-Therese Schmid	\$245 per hour
Brandon Davis	\$220 per hour
Bryce Little	\$215 per hour

To reduce legal fees, the Firm agrees to assign tasks among its partners and associates commensurate with the level of expertise required and to use Legal Assistants, Law Clerks or support staff where appropriate. The Firm shall not bill separately for secretarial, clerical, or other support staff services.

- C. Submission of Invoice. The Firm shall deliver invoices for review and approval of professional fees and reimbursable costs and expenses to the Supervising AGO Attorney with copies sent to the Supervising DOJ Attorney:

Supervising AGO Attorney:

Elizabeth Lagerberg, Assistant Attorney General, Washington State Attorney General's Office, TPC Division, PO Box 40113, Olympia, Washington, 98504-0113, (360) 664-0532 phone, (360) 586-6847 fax.

Supervising DOJ Attorney:

Theodore C. (Ted) Falk, Senior Assistant Attorney General, Oregon Department of Justice, General Counsel Division, 1162 Court Street NE, Salem, Oregon, 93701-4096, Telephone 503-947-4510, Fax: 503-378-3784.

- D. Invoice Contents. The invoice shall aggregate Services for, and shall present a combined sum payable jointly by, WSDOT and ODOT. Upon AGO and DOJ approval of the invoice, AGO will forward the invoice to WSDOT for payment. Following WSDOT's payment of the invoice, WSDOT will then bill the ODOT for reimbursement, according to the terms of the Interstate Funding Agreement for the Columbia River Crossing Project (GCA 4723) between WSDOT and ODOT.
- E. Timely Payment. Payment shall be considered timely if made within 30 days after receipt of this properly completed invoice. Invoices sent for payment must include the Firm's Federal I.D. Tax No. or the invoice will be returned to the Firm for inclusion of that information.

### 3. COSTS AND EXPENSES

Reimbursement. The Firm shall be reimbursed for reasonable costs and expenses as follows:

- A. Photocopying. For normal photocopying at a maximum of 15 cents per page. Expedited photocopying or oversized document photocopying may be reimbursed at a higher rate only with the prior approval of the Supervising AGO and DOJ Attorneys.
- B. Postage/courier. For postage and courier services at the Firm's actual costs.
- C. Telephone/facsimile. For long-distance telephone service and long-distance facsimile at the Firm's actual cost.
- D. Travel. For travel expenses the Firm must conduct all travel in the most efficient and cost-effective manner resulting in the best value to WSDOT and ODOT. Out of State Travel must be approved by the AGO and DOJ in advance of such travel, and in writing.
- E. Computerized Legal Research. Computerized Legal Research will be charged at cost, except instances where the firm maintains a fixed subscription contract with the vendor the cost for the fixed subscription charges are prorated among all of the firm's clients using computerized research during the research period.
- F. Other Costs and Expenses. The Firm shall obtain separate written approval of the Supervising Attorneys for any exceptions to the provisions of this section by AGO and DOJ prior to incurring any such expense.
- G. Advance Payment Prohibited. No payment shall be made in advance or in anticipation of services or supplies under this Agreement.
- H. Coordination of Costs and Expenses. In the event of a conflict between the cost and expense amounts payable under the AGO SAAG Agreement and the DOJ SAAG Agreement, the Firm is entitled to payment as specified in the AGO SAAG Agreement.

**4. TERM**

The term of this Agreement shall extend from the date of appointment to June 30, 2008 or until termination of the WSDOT ODOT Interstate Agreement (GCA 4723) or termination of the concurrent DOJ SAAG Agreement, whichever occurs first. Either party may terminate this agreement upon two weeks written notification. It is agreed that the Firm will be compensated for services provided through the date of notification of termination at the hourly rate noted above, subject to the maximum compensation limit. Compensation for any services provided after notification of termination shall be pursuant to agreement of the parties.

**5. APPLICABLE LAW AND VENUE**

This appointment as Special Assistant Attorney General and this Agreement shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County Superior Court. The Firm, by execution of this Agreement, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

**6. INDEPENDENT CAPACITY OF THE FIRM**

The Firm and its employees or agents performing under this Agreement are not employees or agents of either the AGO or of WSDOT. The Firm will not hold itself out as, nor claim to be, an officer or employee of the State of Washington by reason of this Agreement, nor will it make any claim of right, privilege, or benefit which would accrue to a civil service employee under RCW 41.06.

The designation "Special Assistant Attorney General" may be used in correspondence or pleadings related to this matter, but no reference will be made to the appointee or the Firm as representing any other agency or department of the State as a result of this appointment.

**7. CONFLICT OF INTEREST**

- A. Joint Representation: The Firm acknowledges and agrees that it represents the interests of both the State of Washington on behalf of AGO and WSDOT as well as the State of Oregon on behalf of DOJ and ODOT. The Firm shall perform no services that are adverse to either WSDOT or ODOT and shall represent neither state in any situation where the interests of the states are adverse. This appointment will be terminated if there is or has been a violation of the Ethics in Public Service Act during the performance of this appointment.
  
- B. Notice of Potential Conflict: The Firm shall notify the Attorney General's Office when it is personally participating in cases or matters that may be considered adverse to the State of Washington by advising Senior Assistant Attorney General, Bryce Brown, of the nature of

the matter or the name of the case. For purposes of this appointment, the client is the WSDOT and the State of Washington.

- C. Consent, Objection, Non-Representation: Once advised of potential conflict, the Attorney General's Office may either consent or object to the potential conflict of representation of clients adverse to the State of Washington in cases or matters which are unrelated to the services provided under this Agreement. The Special Assistant, however, agrees not to represent clients in any matter specifically involving WSDOT. The Special Assistant shall decline to undertake specific tasks under this Agreement if a conflict of representation exists with respect to the specific task
  
- D. Disclosure and Request For Consent. As of the Appointment Date, the Firm represents that it has provided adequate information to AGO and DOJ related to any existing conflicts of interest for purposes of obtaining both States' informed consent. Without limitation as to other disclosures that may be required, the Firm has furnished the Supervising Attorneys with a formal informed consent waivers request setting forth, as of the Appointment Date, any disclosures necessary for either the State of Washington or Oregon by virtue of the Firm's work for the States of Oregon or Washington under legal services agreements other than this Agreement or the DOJ SAAG Agreement.
  
- E. Whenever disclosure or written informed consent of either the State of Washington or Oregon is required under this Agreement or under the concurrent SAAG Agreement with DOJ, the Firm shall notify the non-affected agency generally of the potential conflict issue.

## 8. TREATMENT OF ASSETS

- A. Title to all property or materials furnished by WSDOT or AGO (the Agency) shall remain in the Agency. Any property of the Agency furnished to the Firm shall, unless otherwise provided in this Agreement or approved by the Agency, be used only for the performance of this Agreement.
  
- B. The Firm shall be responsible for any loss or damage to property, including data, of the Agency which results from the negligence of the Firm, or which results from the failure on the part of the Firm to maintain and administer the property in accordance with sound management practices. If any Agency property is lost, destroyed, or damaged, the Firm shall immediately so notify the Agency and shall take all reasonable steps to protect the property from further damage. The Firm shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination, or cancellation of this Agreement.

## 9. CONFIDENTIALITY


The Firm shall maintain as confidential all information concerning its advice and recommendations, as well as information related to the business of the Agency, its financial affairs, relations with its clientele and its employees, and any other information which may be specifically

classified as confidential by the Agency in writing to the Firm. To the extent consistent with RCW 42.17.310 (Public Disclosure Act), or its successor act, the Agency shall maintain all information which the Firm specifies in writing as confidential.

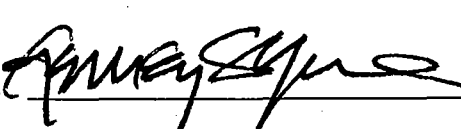
**10. MODIFICATION TO AGREEMENT**

Modifications to the conditions of this appointment must be approved in advance, reduced to writing and signed by the authorized representatives of the respective parties. The Attorney General's Office contact for this purpose is Senior Assistant Attorney General, Bryce Brown.

**OFFICE OF ATTORNEY GENERAL**

By:   
Title: Sen. Asst. Atty. General  
Date: 6/29/06

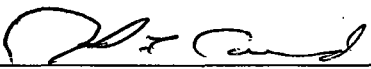
**Nossaman Guthner Knox & Elliott, LLP**

By:   
Title: PARTNER  
Date: 6/8/06  
Fed. Tax I.D. No. 952219542  
or Social Security No. \_\_\_\_\_

If present or former state employee, please provide the following information for the last two years:

Agency: \_\_\_\_\_  
Position Name: \_\_\_\_\_  
Termination Date: \_\_\_\_\_

Acknowledgment of Appointment and  
Obligation to Reimburse for Expenses

By:   
**Washington State Department  
of Transportation**

DEC 21 2006

V-10063 HLR (Assigned by Bob Loveless)

Columbia River Crossing

APPOINTMENT AS SPECIAL ASSISTANT ATTORNEY GENERAL  
TERMS AND CONDITIONS

HLR

AMENDMENT NO. 1

This is **AMENDMENT NO. 1** to the Appointment as Special Assistant Attorney General Terms and Conditions dated June 29, 2006, (Appointment) between the Washington State Attorney General's Office (AGO or Office), 1125 Washington Street SE, P.O. Box 40100, Olympia, Washington 98504-0100, and Nossaman Guthner Knox & Elliot, 445 S. Figueroa Street, 31<sup>st</sup> Floor, Los Angeles, California, 90071, (Special Assistant or The Firm),

**WHEREAS**, The Washington State Department of Transportation (Agency) requested the AGO appoint a Special Assistant Attorney General to assist the Washington State Attorney General's Office (AGO) and the Oregon Department of Justice (DOJ) in providing legal advice on innovative financing and project delivery for the bi-state Columbia River Crossing Project on November 29, 2005, and

**WHEREAS**, due to project deadlines on the Columbia River Crossing Project, and at the request of the Agency, the Special Assistant began work pursuant to an oral agreement between the parties, but prior to the execution of the written Appointment, and

**WHEREAS**, the parties hereto executed the final written Appointment on June 29, 2006, and

**WHEREAS**, the parties hereto wish to amend the written Appointment to reflect the date upon which work was actually authorized by the AGO on behalf of the Agency.

**NOW, THEREFORE, THE PARTIES HEREBY AGREE** to the following terms and conditions regarding this Appointment as Special Assistant Attorney General. All other terms and conditions of this Appointment will remain in full force and effect.

1. Section 2. A. **COMPENSATION AND PAYMENT** is hereby replaced in its entirety by the following section:

2. **COMPENSATION AND PAYMENT**

A. Consideration. Subject to the terms and conditions of this Agreement, compensation will be paid by WSDOT and ODOT. Compensation shall be in accordance with the rate schedule in Sections 2 B and C below for Services rendered, plus expenses up to a total of **\$500,000.00** (the "Maximum Compensation") under the AGO and DOJ SAAG Agreements combined. The Firm acknowledges and agrees that WSDOT and ODOT are the primary sources of funds for all payment for services and reimbursements and shall pay the Firm for only




those services performed after verbally entering in this Agreement on April 1, 2006, and before the expiration or termination of this Agreement. If the maximum compensation is increased by amendment of this Agreement, the amendment must be fully effective before the Firm performs services subject to the amendment.

2. Section 4. **TERM** is hereby replaced in its entirety by the following section:

**4. TERM**

The term of this Agreement shall extend from April 1, 2006, the date verbal approval was given to commence work, to June 30, 2008 or until termination of the WSDOT ODOT Interstate Agreement (GCA 4723) or termination of the concurrent DOJ SAAG Agreement, whichever occurs first. Either party may terminate this agreement upon two weeks written notification. It is agreed that the Firm will be compensated for services provided through the date of notification of termination at the hourly rate noted above, subject to the maximum compensation limit. Compensation for any services provided after notification of termination shall be pursuant to agreement of the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the date set forth above.

<p>OFFICE OF ATTORNEY GENERAL</p> <p>By: <u></u></p> <p>Title: <u>SR AAG</u></p> <p>Date: <u>12/12/06</u></p>	<p>NOSSAMAN, GUTHNER, KNOX &amp; ELLIOTT, LLP</p> <p>By: <u></u></p> <p>Title: <u>PARTNER</u></p> <p>Date: <u>1</u></p> <p>Fed. Tax I.D. No. <u>95 2219542</u> or Social Security No. _____</p>
<p>Acknowledgment of Appointment and Obligation to Reimburse for Expenses</p> <p>By: <u></u></p> <p>Washington State Department of Transportation</p>	