

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”)** is made and entered into, effective as of the date set forth on the City’s signature page (**“Effective Date”**), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (**“City”**) and **MACHOL & JOHANNES, LLC**, a Colorado limited liability company, with its principal place of business located at 717 17<sup>th</sup> Street, Suite 2300, Denver, Colorado 80202 (**“Special Counsel”**), collectively **“the Parties.”**

### **WITNESSETH:**

**WHEREAS**, the City is owed significant amounts of monies as a result of unpaid fines, charges, or other fees imposed by the City under authority of law (which sums of money are referred hereafter to as the **“City’s Accounts”**); and

**WHEREAS**, the City further issued a request for proposals to seek proposals for legal and collection services to assist the City in managing the City’s collection activities; and

**WHEREAS**, the Special Counsel, in response to such advertised request for such proposals, has submitted a written proposal to provide legal and collection services pertaining to the collection of delinquent accounts and other debts owed to the City; and

**WHEREAS**, the City has determined that the proposal submitted by the Special Counsel is the best of the proposals received in response to the advertisement and that acceptance of the proposal from the Special Counsel would be in the best interest of the City; and

**WHEREAS**, Section 6.1.2 of the Charter of the City and County of Denver provides that the City Attorney may employ special counsel to assist him and has determined to retain the Special Counsel as special counsel for collection matters; and

**NOW, THEREFORE**, in consideration of the mutual agreements hereinafter contained, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the Parties as follows:

**1. PROFESSIONAL SERVICES TO BE PERFORMED:**

**A. Scope of Services.** Special Counsel shall provide professional legal services, as provided by Subtitle B of the Denver City Charter at section 6.1.2 and in conformance with the Colorado Rules of Professional Conduct, and professional collection services, collectively referred to as the **“Services,”** concerning the City’s Accounts that are

referred to the Special Counsel, including but not limited to: i) pre-litigation collection and legal services (such as debt validation, skip tracing, and pursuit of pre-judgment remedies); ii) comprehensive litigation (including, but not limited to, witness preparation, appearances in court, drafting and filing of pleadings and other legal documents, services of process, discovery, trial preparation); iii) post-judgment legal and collection services (including, but not limited to, issuance of interrogatories, execution and recordation of garnishments and liens, and asset evaluation hearings); iv) representation of the City upon appeal of any case for which the Special Counsel provided representation in the trial court; v) representation of the City (including drafting and filing Proof of Claims and other legal documents) in appropriate Bankruptcy Courts for collection matters referred to the Special Counsel by the City Attorney or the Director of the Municipal Operations Section of the Department of Law; and vi) any and all other legal and collection services necessary and appropriate to represent the City as requested. It is acknowledged that the Special Counsel's authority to represent the City in bankruptcy matters shall extend only to matters involving the collection of debts related to the City's Accounts and shall not extend to any other bankruptcy matter involving the City. Special Counsel shall supply the City with a copy of all pleadings, motions, briefs, interrogatories, requests for admissions, requests for production of documents, memoranda, orders and judgments of the court or arbitrator, contracts, agreements, memoranda, or other documents prepared by Special Counsel or any subcontractor hired by Special Counsel under this Agreement. Special Counsel agrees that the City Attorney, or the City Attorney's designated representative, shall have final authority over the use of all documents to be prepared in the above matters.

**B. Coordination with Department of Law/City Departments.**

Randall D. Johannes, Esq. shall serve as lead attorney and team leader for the Special Counsel ("**Team Leader**") and shall oversee the provision of the Services under this Agreement. The Team Leader shall be responsible for maintaining sufficient coverage by attorneys for all court appearances made by the Special Counsel on behalf of the City and shall further be available upon reasonable notice to consult with the City regarding the Services being provided. The Special Counsel shall fully coordinate all Services hereunder with the City Attorney, or such other City representative as may be designated by the City Attorney, including designated representatives of the Department of Finance. The Special Counsel agrees that the City Attorney, or the City Attorney's designated representative, shall have final authority over the

provision of the Services, including but not limited to, any and all offers of settlement of any debt owed to the City. The Special Counsel shall have no authority to accept settlement of any debt owed to the City, nor to authorize any judgment or settlement to be paid by the City, except upon: i) the prior written approval of the City Attorney or the City Attorney's designated representative; or ii) in accordance with written guidelines concerning settlement and/or payment plans provided to the Special Counsel from the City and approved by the City Attorney or the City Attorney's designated representative. The City reserves the right, in the City's sole discretion, to reduce, modify, increase or eliminate at any time the balance of any debt assigned to the Special Counsel. If the City determines to reduce or modify the balance of any debt assigned to the Special Counsel, then the Special Counsel shall only be entitled to recover collection fees on the amount actually collected.

**C. Additional Requirements Concerning the Services.**

(1) The Special Counsel shall be solely responsible for the use of legal co-counsel in other States;

(2) The Special Counsel agrees that if at any time that it performs any act or fails to perform any act necessary to protect the interests of the City in the City's Accounts referred to the Special Counsel, which act or failure to act causes a forfeiture of an assigned debt, then the Special Counsel shall be liable to the City for the full amount of the unpaid balance of the debt as of the date of forfeiture;

(3) The Special Counsel shall be responsible for providing a sufficient number of experienced collection agents to efficiently and expeditiously collect the referred accounts;

(4) The Special Counsel agrees to provide, at its sole expense, all secretarial services, paralegal services, investigative services, office space, copying, telephone, facsimile, delivery, supplies, capital equipment, and other services reasonably necessary to provide the Services;

(5) A sufficient number of collection agents and paralegals shall have proficient skills in speaking, reading, and writing Spanish and shall use the Spanish language where appropriate during the provision of the Services;

(6) The Special Counsel shall provide all training and supervision of attorneys and collection agents employed or retained by the Special Counsel necessary to provide the Services;

(7) Photocopies of all judgments in favor of the City, as recorded in the Court Registry of Actions, or a copy of the judgment information as provided by downloading such information from denvergov.org, will be made and delivered to City within fifteen (15) days of entry by the court and at no charge to the City. The City recognizes that due to the financial limitations of the Judicial Department, timely entry of judgments or processing may be delayed. Photocopies of stipulations for judgment or for judgment upon default will also be provided to the City; and

(8) The Special Counsel may negotiate and accept payment of a debt in periodic installments only in accordance with the guidelines established and approved by the City Attorney and the Manager of the Department of Finance, or any of their designated representatives. The Special Counsel shall memorialize all payment plans through a written stipulation sufficient to obtain judgment in full in the event of a subsequent default by the debtor.

(9) All information provided to the Special Counsel shall be used solely for the purpose of collection efforts and may not be provided to any outside agency, business, or person without the consent of the City unless required by law. The phrase “purpose of collection” includes information distributed or gathered for the business purpose of collection.

(10) The City reserves the right to recall any of the City’s Accounts, without charge or offset to the City. If the City recalls any of the City’s Accounts, the Special Counsel shall promptly return any and all files, records, and documentation related thereto (whether in hardcopy or electronic format) to the City.

**D. Security of Computer Use and Information.** The Special Counsel shall establish and maintain policies and procedures to secure and protect all computer equipment and electronic data and information used to provide the Services against theft, loss, damage, misuse, or misappropriation.

Upon the expiration or earlier termination of this Agreement, the Special Counsel shall promptly return to the City any and all case files, case status reports, and other information pertaining to the City’s Accounts as reasonably requested by the City. In the event the expiration or earlier termination of this Agreement, the City in its sole discretion, may allow the Special Counsel to retain accounts that are in garnishment or payment proceedings to prevent the interruption of payment processing and collection for the benefit of the City.

**2. COMPENSATION FOR SERVICES:**

The intent of this Agreement is to compensate the Special Counsel for collection and attorneys' fees only from monies that directly and proximately result from the Special Counsel's successful collection of debts owed to the City. The "Compensation" to be provided to the Special Counsel for services under this Agreement shall be as follows:

**A. Classification of Debts.** The Special Counsel shall be compensated for the following:

**1. General Debts (also known as "Class One Debts").** "Class One Debts" shall consist of debts, fines, fees, and other unpaid charges assessed by the City.

**2. Dishonored Debts (also known as "Class Two Debts").** "Class Two Debts" shall consist of dishonored checks, bank drafts, and other negotiable instruments.

**B. Method of Compensation.**

**1. Collection Fees.** The following collection fees represent the total cost to the City for all of the Special Counsel's fees and expenses resulting from the provision of the Services pertaining to all Class One Debts, and Class Two Debts:

a. Class One Debts. The Special Counsel may retain, as full and complete compensation for all collection and legal activities concerning Class One Debts an amount not to exceed all or a portion of the collection fees authorized by D.R.M.C. §53-4(b) according to the schedule set forth below that directly and proximately results from the Special Counsel's services and successful collection of debts owed to the City.

<u>Amount of Debt</u>	<u>Authorized Collection Fee</u>	<u>Special Counsel's Fee</u>
\$ 0.01 - \$50.00	\$20	\$20
\$ 50.01 - \$100.00	\$30	\$30
\$100.01 - \$150.00	\$40	\$40
\$150.01 - \$200.00	\$60	\$60
\$200.01 - \$300.00	\$80	\$80
\$300.01 and above	30% (of the debt amount)	30% (of the debt amount)

b. Class Two Debts. The Special Counsel may retain, as full and complete compensation for all collection and legal activities concerning Class Two Debts, an amount not to exceed seventy percent (70%) of the fees authorized by Colo. Rev. Stat. §13-21-109(1)(b)(I) and D.R.M.C. §53-3 (which currently represents Thirty Five (\$35.00) out of Fifty Dollars (\$50.00)). Moreover, if civil action is brought pursuant to Colo. Rev. Stat. §13-21-

109(6), and the City is the prevailing party as a result of the services of the Special Counsel, the Special Counsel may retain the balance, if any, of any award of treble damages after the Special Counsel has first remitted to the City the greater of:

- (1) The face amount of the check; or
- (2) One half of any Court awarded treble damages awarded

pursuant to C.R.S. §13-21-109(2)(a).

After said remittance to the City, the Special Counsel may retain any remaining balance from the award of treble damages. The Special Counsel may retain up to the entire portion of any attorneys' fees awarded by the Court in excess of the face amount of the check.

c. Settlement of Class One Debts. With respect to all collection and legal activities concerning Class One Debts, in which the settlement of a debt is negotiated and accepted by the Special Counsel for less than the full amount of the debt due to the City in accordance with the written approval of or guidelines from the City, the Special Counsel shall be compensated in accordance with the fee schedule set forth in **Exhibit A** attached hereto and incorporated herein by this reference and in accordance with the Settlement guidelines set forth in **Exhibit B** attached hereto and incorporated herein by this reference. The parties may modify the debts and/or fees set forth in **Exhibit A** from time to time by memorializing in writing a revised and restated fee schedule that has been executed by the Special Counsel and the Manager, and has been approved as to form by the City Attorney's Office. Each revised and restated fee schedule shall bear an exhibit label beginning with the Exhibit letter reference "A" followed by "1" and continuing in consecutive numeric order with the Exhibit letter preceding each number (i.e., Exhibit A-1, A-2, etc.). Each and every revised fee schedule for settled debts shall be executed by the City and the Special Counsel in two (2) original counterparts and shall, upon the date of execution thereof and compliance with the conditions of this section 2.B.1.c. be deemed to be a part this Agreement, incorporated herein as if originally set forth herein and shall further be subject to all other terms and conditions of this Agreement.

d. Payment Plans Using Periodic Installments for Class One Debts. With respect to all collection and legal activities concerning Class One Debts, in which the Special Counsel establishes a periodic payment plan in accordance with the written approval of or guidelines from the City, the Special Counsel shall be compensated in accordance with the fee schedule set forth in **Exhibit A** and in accordance with the Payment Agreement guidelines set

forth in **Exhibit B**. The parties may modify the fee schedule for payment plans by implementing the provisions concerning changes to **Exhibit A** as set forth in section 2.B.1.c. above.

2. **Attorneys' Fees.** In the event that the Special Counsel successfully obtains an award of Attorneys' Fees by a court of competent jurisdiction and to the extent that such attorneys' fees are recoverable by law or other binding agreement, the Special Counsel may retain said fees. For purposes of this Agreement, "Attorneys' fees" shall mean an award of fees by the Court to the Special Counsel for services actually provided and expenses actually incurred in connection with the recovery and receipt of debts owed to the City. In no event shall the term "Attorneys' fees" include the amount of any debt, or any portion thereof, owed to the City and recovered by the Special Counsel.

3. **Litigation Costs.** The Parties intend that the City's preferred method to compensate the Special Counsel for the costs of litigation shall be for the Special Counsel to recover all said costs from monies obtained from the Special Counsel's successful collection of debts owed to the City (either as a result of the Special Counsel's collection activity or as a result of an award of attorneys fees). The Special Counsel shall implement and maintain sufficient record keeping practices to memorialize the amount of litigation costs incurred for the City's Accounts. Until such time as the Special Counsel recovers litigation costs from collection activity or an award from the Court, the Special Counsel may submit a monthly invoice to the City for reimbursement of said costs for only the accounts of the City for which the Special Counsel has initiated litigation. For purposes of this Agreement only, the initiation of litigation shall be deemed to have occurred upon the Special Counsel's preparation of a summons and complaint and attempted service of process. If the Special Counsel subsequently recovers monies for litigation costs, in whole or in part, that the City previously reimbursed to the Special Counsel, then the Special Counsel shall remit to the City said monies with their next regular monthly remittance of collected monies.

The City will reimburse the Special Counsel for the following litigation costs as follows:

a. **Court Reporter Services, Docket/Filing Fees, Service of Process.** The actual fees paid by the Special Counsel for court reporter services, docket and filing fees, if any, actual costs of process servers, and reasonable witness appearance fees, and any other actual court costs.

Any billing for any other reasonable expenses incurred by the Special Counsel shall

require the approval of the City Attorney or the City Attorney's designee in advance.

**C. Invoice for Reimbursements of Costs.** To obtain reimbursement from the City for the Special Counsel's actual costs, the Special Counsel shall submit to the City a monthly invoice itemizing all eligible expenses incurred during the billing period in such format as designated by the City Attorney or the City Attorney's designated representative. All invoices shall reference the Contract Control number of this Agreement as designated below on the City's signature page. The City reserves the right to require such additional documentation as it deems appropriate to support the periodic invoice of the Special Counsel. Any questions regarding the eligibility of an expense must be resolved in writing by the City prior to the incurrence of such expense by the Special Counsel. A partner of the Special Counsel shall verify the monthly invoice. Invoices are confidential attorney-client privileged documents and shall remain as such until and unless otherwise directed by the City Attorney. The City shall use its best efforts to pay invoices within thirty (30) days of receipt.

The Special Counsel shall attach to all invoices and billings provided hereunder a completed copy of the Invoice Review document, a blank copy of which is attached hereto as **Exhibit C** and incorporated herein by reference. The City reserves the right to require such additional documentation as it deems appropriate to support the monthly invoice of Special Counsel.

**D. No Other Methods of Payment for Collection or Attorneys' Fees.** The Special Counsel shall have no expectation to receive from the City and the City shall not be obligated to provide compensation for collection or attorneys' fees by any other method of payment including, but not limited, to "Hourly Fees," "Out of Pocket Expenses," "Reimbursement of Costs," or "Flat Rates". The City does not intend and shall have no obligation to appropriate funds to provide the Compensation to be provided to the Special Counsel.

**E. Return of Funds to City.** Beginning on the second month of the term of this Agreement and for each month thereafter, the Special Counsel shall by no later than the twentieth (20<sup>th</sup>) day of each month: 1) remit to the City by check, payable to the Manager of Finance, all monies owed to the City for Class One and Class Two Debts actually collected and/or recovered by the Special Counsel less the Compensation for Class One and Class Two Debts, as defined above; 2) any and all interest earned concerning Class One and Class Two Debts as described in more detail in Article 3.F below; and 3) the Reports described in Article 4



below. It is understood and agreed that for all Class One and Class Two Debts, the Special Counsel shall be paid only from monies that directly and proximately result from the Special Counsel's services and successful collection of debts owed to the City. If the collection efforts or Services provided by the Special Counsel fail to recover any debt owed to the City, then the City shall have no obligation to provide any compensation, fees, expenses, costs, or funds to the Special Counsel except as may be permitted in Article 3 of this Agreement. Moreover, if the City directly receives or intercepts monies from a debtor in satisfaction of a debt that was previously referred to the Special Counsel for collection and legal services, then the Special Counsel shall have no right to any compensation for debt collection and other services provided.

**F. Bank Account and Interest.** For Class One and Class Two Debts, the Special Counsel will establish and maintain, at a Denver bank acceptable to the City, a separate interest bearing account that will be used solely in connection with the funds received under this Agreement (which account is at times referred to as the "City's Bank Account"). Except as may be permitted by this Agreement, the City's Bank Account shall not be commingled with any other funds or monies. If the Special Counsel determines that it is in the best interests of the City to close the City's Bank Account, then it will establish another similar account at a bank located in Denver within thirty (30) days of the date of opening such new account and will notify the City in writing. The City, through the Manager of Finance, shall have final approval over the bank chosen by the Special Counsel. All requirements of this subparagraph concerning the City's Bank Account shall apply to the substitute bank. Within thirty (30) days of the date of execution of this Agreement, the Special Counsel shall deliver to said bank an authorization signed by the Special Counsel stating that:

(1) The bank account is maintained pursuant to an agreement with the City;

and

(2) The Special Counsel authorizes the bank to forthwith comply with any written request made by the City to furnish any bank statements, canceled checks or other information in the possession or control of the bank relating to this bank account; and

(3) The Special Counsel authorizes the bank to forthwith comply with any written requests made by the City to transfer the balance of funds remaining in the account as designated by the City upon the expiration or earlier termination of this Agreement. If such request is made, the Special Counsel shall submit to the City a written list of any and all

outstanding checks and unpaid expenses within ninety (90) days from the expiration date or effective date of termination. The City will be responsible for honoring valid checks and paying valid expenses written or incurred prior to the expiration date or effective date of termination as documented by the Special Counsel.

The Special Counsel shall deliver to the City a copy of the authorization with the signature of an authorized bank representative indicating that the authorization has been received and accepted by the bank. The Special Counsel shall notify the City in writing within thirty (30) days of the date of execution of this Agreement, of the persons authorized by the Special Counsel to receive, handle or disburse monies under this Agreement.

**G. Appropriations.** Any other provision of this Agreement notwithstanding, in no event shall the City be liable, during the initial term hereof and all four (4) extension periods, if exercised, for payment for services rendered and expenses incurred by the Special Counsel under the terms of this Agreement for any amount in excess of **ONE MILLION DOLLARS AND ZERO CENTS (\$1,000,000.00)** (“**Maximum Contract Amount**”) payable as follows:

(1) For litigation costs for Class One and Class Two Debts, the City’s total obligation will not exceed the annual amount of **TWO HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$200,000.00)**; and

Compensation for collection and attorneys’ fees for all Class One and Class Two Debts will be derived solely and exclusively from monies that directly and proximately result from the Special Counsel’s successful collection of debts owed to the City. The Special Counsel acknowledges that the City has not appropriated and will not appropriate funds for the purpose of paying collection and attorneys’ fees for Class One and Class Two Debts. The Special Counsel acknowledges that the City is not obligated to execute an amendment to this Agreement for any further phase of work other than the work described herein, and that any work performed by Special Counsel beyond that specifically described is performed at the Special Counsel’s risk and without authorization under this Agreement.

It is further acknowledged by the Special Counsel that any and all payment obligations of the City hereunder, whether direct or contingent, or for any other incidental cause shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, paid into the Treasury of the City and encumbered for the purposes of this Agreement. The Special Counsel acknowledges that (i) the City does not and will not irrevocably pledge present case

reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as provided in D.R.M.C. §20-107 to §20-115.

**3. TERM:** The term of the Agreement is from December 1, 2013 until November 30, 2014, subject to the unilateral options in the City to renew for up to four (4) additional one-year terms, or until the Maximum Contract Amount specified in Article 3.G above is expended, whichever is sooner, unless this Agreement is terminated earlier as provided in this Agreement or is extended as provided in a separate amendment to this Agreement (“**Term**”). Subject to the City Attorney’s prior written authorization, the Special Counsel shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the City Attorney. All options to renew the Term will be exercised by the action of the City Council in appropriating funds for the payment of expenses and fees for another year. If such an appropriation for this Agreement is not made for a future fiscal year, the City will be deemed to have thereby failed to exercise its option to renew this Agreement for such year, and this Agreement will expire at the expiration of the then current term. It is expressly understood and agreed that if the City exercises any option to renew this Agreement, its obligation to make payments to the Special Counsel will extend only to monies appropriated by the Denver City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement.

**4. REPORTS.** The Special Counsel shall submit to the City, upon request, the following reports (the “Reports”):

**A. Debtor Status Report:** This report shall include the account name and number assigned by the City, the date the account was assigned to the Special Counsel (also known as the “turnover” date); the beginning balance, amounts collected, current balance, and collection status of the account.

**B. Collection Analysis Report.** This report shall include the total number of accounts assigned to the Special Counsel, the total outstanding amounts owed to the City on such accounts, gross collections in dollars and Collections matched against the month the account was placed with the Special Counsel, collection fees in dollars and Collections retained by the

Special Counsel; and accounts (identified individually and in the aggregate) that the Special Counsel has determined to be uncollectible.

C. **Other Reports.** The Special Counsel shall prepare and submit any other report or information pertaining to collection and legal matters assigned to the Special Counsel as reasonably requested by the City.

D. **Format/Verification/Late Reports.** The Reports required by this Article shall be provided in three formats: the preceding month, the preceding quarter, and year-to-date aggregate data. All Reports shall be verified by a partner of the Special Counsel. If the Special Counsel does not submit required Reports when due, the City may withhold any payments payable to the Special Counsel under this Agreement or it may invoke any remedy provided in this Agreement or otherwise available to the City by law.

E. **Delivery of Reports.** All Reports shall be delivered to Mr. Mark Lucero, Treasury Division, Department of Finance, 201 West Colfax Avenue, 4<sup>th</sup> Floor, MC 501, Dept. 1009, Denver, Colorado 80202, with a copy provided to Mr. Bruce Moore at the address above. The City reserves the right to require such additional information on the monthly financial statement or to request and receive other documentation, as it deems appropriate to review the services provided by the Special Counsel. All reports submitted to the City shall be considered confidential attorney-client privileged documents and shall remain as such until and unless otherwise directed by the City Attorney.

F. **Data Bases the Property of the City.** Notwithstanding any other term or condition of this Agreement, all documents, reports, plans, information contained in electronic databases, electronic files, or other written products created for the use of the City under this Agreement shall be the exclusive property of the City for all purposes and shall be readily accessible by or provided to City for municipal purposes in such manner and format as reasonably designated by the City Attorney.

5. **BOOKS OF ACCOUNT AND AUDITING.** The Special Counsel shall keep and make available upon request true and complete records and accounts of all monies collected on the City's Accounts, including daily bank deposits. The Special Counsel agrees to establish and maintain a system of bookkeeping concerning the City's Accounts satisfactory to the City Auditor. Such system shall be kept in a manner as to allow the collection and legal services hereunder to be distinguished from all other business operations of the Special Counsel. The

Special Counsel shall keep and preserve for at least three years after the final payment under this Agreement, any and all records, books, slips, or other evidence of monies collected on the City's Accounts for such period. The City's Auditor, the City Attorney, or the Manager of the Department of Finance (or any of their respective authorized representatives) shall have the right at any time to examine, inspect, or audit any directly pertinent books of account, bank statements, documents, records, returns, papers and files of the Special Counsel relating to the monies collected on the City's Accounts.

The Special Counsel, upon written request, shall make all such documents available for examination within the Denver metropolitan area; or shall pay to the City in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to the Special Counsel. Such documents shall be available to the City representative within fourteen calendar days of the date of the written request. The parties agree that any delay in furnishing such records to the City will cause damages to the City which the parties agree are liquidated in the amount of Three Hundred and Fifty Dollars (\$350) per day for each day the records are unavailable beyond the date established as the City's notice.

If City determines after an audit that the Special Counsel did not remit to the City any monies collected on the City's Accounts, the Special Counsel shall pay the amount of the deficiency plus interest at the rate of eighteen percent (18%) per annum ("Past Due Interest Rate") beginning from the date the monies should have been remitted to the City. If the amount of monies that were not remitted is more than one percent (1%) of the total amount actually remitted, then the Special Counsel shall further pay to City the cost of the audit in addition to the deficiency and interest. The City's right to perform such an audit shall expire three years after the last monthly statement due to the City.

The Special Counsel shall ensure that all of the above requirements concerning books of account and auditing shall be set forth in any subcontracts hereunder into which it may enter, as required herein, in such a manner as to allow the City and County of Denver the same rights as to each and every subcontractor and sub consultant as it shall have as to the Special Counsel, including but not by way of limitation the right to audit the books of each subcontractor and sub

consultant, and requiring each subcontractor and sub consultant to comply with and be bound by all of the bookkeeping, accounting and audit provisions and obligations contained herein.

The City Attorney, the Manager of Finance, or the Auditor of the City (or any authorized representative of said City officials) shall have the right to inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by the Special Counsel with the City's Manager of Finance and any related reports, document, data or other information generated by the City's Manager of Finance or employees under the control of such Manager of Finance in connection with any investigation or audit of the Special Counsel by the City's Department of Finance. The Special Counsel authorizes and permits the inspection of such documents, data, returns, reports and information by the Manager of Finance, the City Attorney, or the Auditor (or any authorized representative of said City officials), and further waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

**6. COMPLIANCE WITH LAWS.** By its signature below, the Special Counsel assures and certifies that it will comply with all applicable Federal, State and City laws, ordinances, codes, regulations, rules, executive orders, and policies whether or not specifically referenced herein, including but not limited to the Federal Fair Debt Collections Practices Act, the Federal Fair Credit Reporting Act, the State of Colorado, Accounts Receivable Collections Rules set forth at 1 CCR 101-6, the Colorado Fair Debt Collection Practices Act, and all other state and federal consumer protection and collection practices laws.

**7. STATUS OF SPECIAL COUNSEL:** The status of the Special Counsel under this Agreement shall be that of licensed attorneys at law, providing professional legal services to the City under this Agreement, and neither Special Counsel nor its agents or personnel shall be considered employees of the City for any purpose whatsoever.

**8. TERMINATION:** The City may terminate this Agreement at any time, with or without cause. Termination shall be subject to Court consent, if such consent is required. If the Special Counsel's services are terminated, it shall be paid only for that portion of services satisfactorily completed in accordance with this Agreement at the time of notice of such action.

**9. EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Special Counsel, involving transactions

related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

**10. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Special Counsel. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

**11. INSURANCE:**

**a. General Conditions:** Special Counsel agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Special Counsel shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Special Counsel. Special Counsel shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Special Counsel. The Special Counsel shall maintain, at its own expense, any

additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**b. Proof of Insurance – Workers’ Compensation, Commercial General Liability, and Professional Liability:** Special Counsel shall provide a copy of this Agreement to its insurance agent or broker. Special Counsel may not commence services or work relating to the Agreement prior to placement of coverage. Special Counsel certifies that the certificate of insurance attached as **Exhibit D**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement with the exception of the Personal Automobile insurance requirement. Acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Special Counsel’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**c. Additional Insureds:** For Commercial General Liability, Special Counsel and subcontractor’s insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**d. Waiver of Subrogation:** For all coverages, Special Counsel’s insurer shall waive subrogation rights against the City.

**e. Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Special Counsel. Special Counsel shall include all such subcontractors as additional insured under its policies (with the exception of Workers’ Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Special Counsel agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

**f. Workers’ Compensation/Employer’s Liability Insurance:** Special Counsel shall maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Special Counsel expressly



represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Special Counsel's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Special Counsel executes this Agreement.

**g. Commercial General Liability:** Special Counsel shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**h. Business Automobile Liability:** Special Counsel shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**i. Professional Liability:** Special Counsel shall maintain professional liability limits of \$1,000,000.00 per claim and \$1,000,000.00 aggregate policy limit.

**j. Commercial Crime:** Special Counsel shall maintain \$1,000,000 in commercial crime coverage. Coverage shall include theft of the City's money, securities or valuable property by Special Counsel's employees, including any extended definition of employee. Policy shall include Client Coverage. The City and County of Denver shall be named as Loss Payee as their interests may appear.

**k. Additional Provisions:**

- (1) For Commercial General Liability, the policy must provide the following:
  - A. That this Agreement is an Insured Contract under the policy;
  - B. Defense costs are in excess of policy limits;
  - C. A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
  - D. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (2) For claims-made coverage:

- A. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
  - B. Special Counsel shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits.
- (3) At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Special Counsel will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**12. DEFENSE AND INDEMNIFICATION**

a. Special Counsel agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims shall have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Special Counsel or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Special Counsel’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Special Counsel’s duty to defend and indemnify City shall arise even if City is the only party sued by Claimant and/or Claimant alleges that City’s negligence or willful misconduct was the sole cause of Claimant’s damages.

c. Special Counsel will defend any and all Claims brought or threatened against City, and will pay on behalf of City, any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be

in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Special Counsel under the terms of this indemnification obligation. The Special Counsel shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

13. **COLORADO GOVERNMENTAL IMMUNITY ACT**: In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

14. **TAXES, CHARGES AND PENALTIES**: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance § 20-107, *et seq.*, of the Denver Revised Municipal Code (D.R.M.C.). The Special Counsel shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

15. **ASSIGNMENT; SUBCONTRACTING**: Except as specifically authorized hereunder, the Special Counsel shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the City Attorney's prior written consent. Except as specifically authorized hereunder, any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The City Attorney has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement on account of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Special Counsel shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

16. **INUREMENT**: The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and

permitted assigns, provided assignments are consented to in accordance with the terms of the Agreement.

**17. NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Special Counsel receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**18. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Special Counsel lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

**19. SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

**20. CONFLICT OF INTEREST:**

**a.** No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. Special Counsel shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

**b.** Special Counsel acknowledges that it and its attorneys are bound by the Colorado Rules of Professional Conduct applicable to Colorado attorneys, including without limitation Rule 1.7, which addresses a lawyer's engagement under circumstances involving a conflict of interest. Special Counsel shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Special Counsel represents that it has disclosed any and all current or potential conflicts of interest, which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Special Counsel by placing the Special Counsel's own interests, or the interests of any party with whom the Special Counsel has a professional relationship or contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and

may terminate the Agreement in the event it determines a conflict exists, after it has given the Consultant written notice describing the conflict.

**21. NOTICES:** Notices concerning termination of the Agreement, alleged or actual violations of the terms of the Agreement, and matters of similar importance must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Special Counsel at the address first above written, and if to the City at:

Robert A. McDermott, Esq.  
Assistant City Attorney  
Denver City Attorney's Office  
City and County of Denver  
201 West Colfax Avenue, Dept 1207  
Denver, Colorado 80202

and

Mr. Mark Lucero  
Treasury Division  
Department of Finance  
201 West Colfax Avenue, 4<sup>th</sup> Floor, MC 501  
Dept. 1009  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**22. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

**a.** This Agreement is subject to D.R.M.C. Division 5 of Article IV of Chapter 20, and any amendments (the "Certification Ordinance").

**b.** The Special Counsel certifies that:

**(1)** At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

**(2)** It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all

employees who are newly hired for employment to perform work under this Agreement.

c. The Special Counsel also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Special Counsel that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
- (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Special Counsel to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Special Counsel will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment

under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. § 20-90.3.

d. The Special Counsel is liable for any violations as provided in the Certification Ordinance. If Special Counsel violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Special Counsel shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Special Counsel from submitting bids or proposals for future contracts with the City.

23. **DISPUTES**: All disputes between the City and Special Counsel arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et seq.* For the purposes of that administrative procedure, the City official rendering a final determination shall be the City Attorney.

24. **GOVERNING LAW; VENUE**: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Denver Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

25. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under the Agreement, the Special Counsel may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Special Counsel shall insert the foregoing provision in all subcontracts.

26. **COMPLIANCE WITH ALL LAWS**: Special Counsel shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes

of the United States and State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**27. LEGAL AUTHORITY:** Special Counsel represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Special Counsel represents and warrants that he has been fully authorized by Special Counsel to execute the Agreement on behalf of Special Counsel and to validly and legally bind Special Counsel to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Special Counsel or the person signing the Agreement to enter into the Agreement.

**28. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

**29. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

**30. INTELLECTUAL PROPERTY RIGHTS:** The City and Special Counsel intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Special Counsel and any subcontractor hereunder and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Special Counsel shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Special Counsel and any subcontractor hereunder (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.



**31. SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Special Counsel's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**32. ADVERTISING AND PUBLIC DISCLOSURE:** Special Counsel shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Special Counsel's advertising or public relations materials without first obtaining the written approval of the City Attorney. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Special Counsel shall notify the City Attorney in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**33. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Special Counsel consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**34. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**35. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation,

renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments will be, binding upon the Parties and their successors and assigns.

**36. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Special Counsel shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs.

**37. COUNTERPARTS OF THE AGREEMENT:** The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

**[Signatures appear on the following pages.]**

**ATTACHMENTS:**

EXHIBIT A - COMPENSATION FEE SCHEDULE FOR SETTLEMENT OF CERTAIN DEBTS  
EXHIBIT B - GUIDELINES FOR SETTLEMENT AND/OR PAYMENT PLANS FOR SETTLED DEBTS  
EXHIBIT C - OUTSIDE COUNSEL/PROFESSIONAL SERVICES INVOICE REVIEW  
EXHIBIT D - CERTIFICATE OF INSURANCE

Contract Control Number: ATTNY-201313156-00

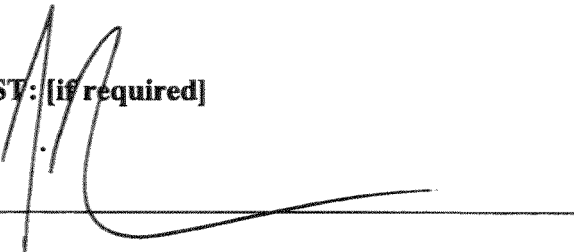
Contractor Name: MACHOL & JOHANNES LLC

By: 

Name: Randall D. Johannes  
(please print)

Title: Managing Attorney  
(please print)

ATTEST: [if required]

By: 

Name: Nick Machol  
(please print)

Title: Chief Operating Officer  
(please print)



**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Exhibit A**

**Compensation Fee Schedule for Settlement of Certain Debts**

<b>Original Amount of Debt</b>	<b>D.R.M.C. Authorized Fee</b>	<b>Debt Amount Including D.R.M.C. Fee</b>	<b>Special Counsel's Fee on Collection of Full Debt</b>	<b>Special Counsel's Compensation When a Debt is Settled</b>	<b>Special Counsel's Compensation Utilizing a Payment Agreement</b>
\$0.01 - \$50.00	\$20	\$20.01 - \$70.00	\$20	21%*	(29%) of each installment payment*
\$50.01 - \$100.00	\$30	\$80.01 - \$130.00	\$30	21%*	(29%) of each installment payment*
\$100.01 - \$150.00	\$40	\$140.01 - \$190.00	\$40	21%*	(29%) of each installment payment*
\$150.01 - \$200.00	\$60	\$210.01 - \$260.00	\$60	21%*	(29%) of each installment payment*
\$200.01 - \$300.00	\$80	\$280.01 - \$380.00	\$80	21%*	(29%) of each installment payment*
\$300.01 or Greater	30% of Debt	Original Debt plus 30%	29%	21%*	(29%) of each installment payment*

**\*Not to exceed the total D.R.M.C. fee**

## **Exhibit B**

### **Guidelines for Settlement and/or Payment Plans for Settled Debts**

#### **Guidelines for Settlement and/or Payment Plans**

Pursuant to: Section I.B. Coordination with Department of Law, of the Agreement as of the Effective Date between the City and County of Denver and the law firm of **MACHOL & JOHANNES, LLC**, a Colorado limited liability company. The following guidelines shall be followed regarding accepting settlements of LESS THAN THE FULL AMOUNT DUE ON ANY CLASS OF DEBT, and or the establishment of PAYMENT PLANS FOR THE REPAYMENT OF ANY SUCH CITY DEBT.

#### **Settlement Guidelines**

1. **FOR DEBTS WITH A BALANCE DUE OF LESS THAN \$10,000**

If, after diligently pursuing and exhausting all appropriate collection and legal remedies, as mutually determined from time to time by the parties, to recover the full amount due for any City debt, the Special Counsel determines that the full amount due is not collectible, the Special Counsel is authorized to settle ANY CLASS of DEBT for an amount that in their best professional judgment is the maximum amount attainable.

2. **FOR DEBTS WITH A BALANCE DUE EQUAL TO OR GREATER THAN \$10,000**

Prior to settling any Class One or Class Two Debt, with a balance due equal to or greater than Ten Thousand Dollars (\$10,000), the Special Counsel shall contact the City Attorney's and the Manager of Finance's designated representative: Mark Lucero, to obtain approval.

#### **Payment Agreement Guidelines**

1. **FOR DEBTS WITH A BALANCE DUE OF LESS THAN \$10,000**

If, after diligently pursuing all appropriate collection and legal remedies, as mutually determined from time to time by the parties, to recover the full amount due for any Class of Debt, the Special Counsel determines that the best way to recover the amount due is to arrange for the debtor to pay the debt in periodic installments, the Special Counsel is authorized to establish a repayment plan to collect the debt, and to structure the payment terms utilizing their best professional judgment to attain repayment in the most efficient and appropriate manner possible. If litigation has already been initiated, the Special Counsel is authorized to execute a written agreement and to obtain a court order for the full amount with interest and penalties to collect the debt, and to structure the payment terms utilizing their best professional judgment to attain repayment in the most efficient and appropriate manner possible. Any and all such settlement agreements may be filed with the Court.

2. **FOR DEBTS WITH A BALANCE DUE EQUAL TO OR GREATER THAN \$10,000**

Prior to executing a payment agreement for any Class One or Class Two Debt with a balance due equal to or greater than Ten Thousand Dollars (\$10,000), the Special Counsel shall contact the City Attorney's and the Manager of Finance's designated representative: Mark Lucero, to obtain approval for the proposed agreement and terms. Any and all such agreements may be filed with the Court.

**EXHIBIT C**

**OUTSIDE COUNSEL/PROFESSIONAL SERVICES INVOICE REVIEW**

*(TO BE COMPLETED BY OUTSIDE COUNSEL/PROFESSIONAL SERVICES PROVIDER AND ATTACHED TO ALL BILLINGS)*

Name of Firm: \_\_\_\_\_

Billing Attorney/Party: \_\_\_\_\_ For Services Rendered In (Month): \_\_\_\_\_

Date Invoice sent: (1) \_\_\_\_\_ City Attorney's Office Supervising Attorney/Manager: \_\_\_\_\_

Matter: \_\_\_\_\_ Invoice No. \_\_\_\_\_

Contract No.: \_\_\_\_\_ Contract Expiration Date: \_\_\_\_\_

\_\_\_ 1. **CONTRACT BILLING STATUS**

BILLINGS	FEES	DISBURSEMENTS/EXPE NSES	TOTAL
Contract Cap Amt.			
Invoice Amts. to Date:			
Current Invoice Amt.			
Balance Remaining:			

\_\_\_ 2. **EFFECT OF CURRENT INVOICE ON CONTRACT CAP:**

Within 15% of Contract Cap? Yes \_\_\_ No \_\_\_

\_\_\_ 3. **Please provide the anticipated billings (for services) for the next two months.**

Amounts: \$ \_\_\_\_\_ and \$ \_\_\_\_\_.

\_\_\_ 4. **Have there been any developments that call for review of the project work plan or indicate the need to amend the contract cap amount? Yes \_\_\_ (2) No \_\_\_**

\_\_\_ 5. **Have there been any changes in hourly rates or disbursement charge rates since the last invoice?**

Yes \_\_\_ (2) No \_\_\_

\_\_\_ 6. **Did you submit documentation for items over \$500?**

	Yes	No (2)	N/A	Name of Authorizing Party
Outside Photocopying	_____	_____	_____	
Computer Research (Lexis/Nexis/Westlaw)	_____	_____	_____	
Other (2) _____	_____	_____	_____	

Signature of Firm's Billing Attorney/Party: \_\_\_\_\_ Date: \_\_\_\_\_

**Section below to be completed by CAO Supervising Attorney/Manager**

Date Form Reviewed	\$ OK to pay	Signature
--------------------	-----------------	-----------

- (1) Please provide explanation if invoice is sent after 15th of month following services.
- (2) Please explain.



**EXHIBIT D**

**(INSURANCE COVERAGE ON FOLLOWING PAGE(S))**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/26/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> First Indemnity Insurance 87 Oxford Street  Lynn MA 01901		<b>CONTACT NAME:</b> Natalie Sandoval <b>PHONE (AST. No. Ext.):</b> (781) 581-2500 <b>FAX (AG. No.):</b> (781) 595-2293 <b>E-MAIL ADDRESS:</b> nsandoval@firstindemnity.net	
<b>INSURED</b> Machol & Johannes, LLC 717 17th Street Suite 2300  Denver CO 80202		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> RLI Differnt Works	
		<b>INSURER B:</b>	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** CL11102831431      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL COVR INSR (MM/YY)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Deductible \$1,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC		PMB0002012	2/1/2013	2/1/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		PMB0002012	2/1/2013	2/1/2014	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$		PMB0002007	2/1/2013	2/1/2014	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>Business Owners Policy</b>		PMB0002012	2/1/2013	2/1/2014	Business Personal Property: \$1,345,853 Valuable Papers: \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Certificate Holder is Loss Payee

### CERTIFICATE HOLDER

### CANCELLATION

City and County of Denver  
Treasury Division, Dept. of Finance  
Attn: Mr. Mark Lucero  
201 West Colfax Ave. 4th FL  
MC 501, Dept. 1009  
Denver, CO 80202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/26/2013PRODUCER (781)581-2500 FAX: (781)595-2293  
First Indemnity Insurance  
87 Oxford Street

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Lynn MA 01901

## INSURERS AFFORDING COVERAGE

NAIC #

INSURED  
Machol & Johannes, LLC  
717 17th Street Suite 2300

INSURER A: Travelers

INSURER B:

INSURER C:

INSURER D:

INSURER E:

Denver CO 80202

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
		<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
		<b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				Y/N <input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A		<b>OTHER Crime/Employee Theft Bond</b>	105238629	2/13/2013	2/13/2014	Employee Theft \$5,000,000 ERISA Fidelity \$50,000 Claim Expense \$5,000

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

This is a Fidelity Bond. Single Loss Retention of \$25,000 is Applicable to Employee Theft Only.

## CERTIFICATE HOLDER

City and County of Denver  
Treasury Division, Dept. of Finance  
Attn: Mr. Mark Lucero  
201 West Colfax Ave. 4th FL  
MC 501, Dept. 1009  
Denver, CO 80202

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2009/01)  
INS025 (200801)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## GENERAL CHANGE ENDORSEMENT

This endorsement modifies Insurance provided under the following:

### LAWYERS PROFESSIONAL LIABILITY COVERAGE PART

In consideration of an additional premium of \$0.00, it is hereby understood and agreed that attorney Brian Methner is added to the policy effective 06/24/2013.

It is also hereby understood and agreed that Form IIC LP 20 01 (03 12) Named Attorney Retroactive Date Endorsement attached is to supercede original on file.

All other terms and conditions remain unchanged.

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This endorsement effective on 2/1/2013 at 12:01 A.M. standard time, forms a part of  
(DATE)

Policy No. IFI 770802-00 of the  
(NAME OF INSURANCE COMPANY)

Issued to Machol & Johannes, LLC

IIC LP 20 04 (03 12)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## RETROACTIVE DATE ENDORSEMENT

This endorsement modifies Insurance provided under the following:

### LAWYERS PROFESSIONAL LIABILITY COVERAGE PART

In consideration of the premium paid, it is agreed that the policy is amended as follows:

This policy does not apply to any CLAIMS or CLAIMS arising from, attributable to, or based upon any WRONGFUL ACT (S) committed or alleged to have been committed by the following lawyers prior to the corresponding retroactive date.

#### NAME OF ATTORNEY AND RETROACTIVE DATE

Jacques A. Machol Jr.	01/01/1963
Jacques A. Machol III	10/01/1977
Randall D. Johannes	09/23/1985
James A. Kaplan	01/01/1988
Arianne Gronowski	08/08/2006
Roger Rahlfs	08/01/2011
Mercedes Poley	01/09/2012
Richard D. Drowley	03/04/2012
Darren B. Tallman	05/07/2012
Alison C. Nisbet	06/04/2012
John P. Casissy OC	01/23/2013
Randall W B Purvis OC	01/23/2013
George Meziere OC	01/23/2013
Brandon Friede	04/22/2013
Scott Joseph Long	06/11/2013
Joshua K. Ramsey	05/17/2010
Brian G. Methner	10/29/2002

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/08/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: First Indemnity Insurance, 87 Oxford Street, Lynn, MA 01901
CONTACT NAME: Michael Cimmino
PHONE: 781-581-2500, FAX: 781-595-2293
E-MAIL ADDRESS: mcimmino@firstindemnity.net
INSURED: Machol & Johannes, LLC, 717 17TH Street, Denver, CO 80202
INSURERS AFFORDING COVERAGE: Imperium Insurance Company

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER: THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSRD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include General Liability, Automobile Liability, Umbrella Liab, Workers Compensation and Employers' Liability.

A Lawyers Professional IFI 770802-00 02/01/13 02/01/14 Each Claim: \$2,000,000 General Aggregate: \$2,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACCORD 101, Additional Remarks Schedule, if more space is required)
Claims made Coverage, Covering 10 Attorneys, Retroactive Date: Various. Deductible is \$50,000.00 Per Claim and applies to Loss and Defense. Claims Expenses inside the limits of liability.

CERTIFICATE HOLDER CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF... AUTHORIZED REPRESENTATIVE (Signature)