

## A G R E E M E N T

**THIS SPECIAL COUNSEL AGREEMENT** (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (“City”) and **KAPLAN KIRSCH & ROCKWELL LLP**, a Colorado limited liability partnership, with its principal place of business located at 1675 s. Broadway, #2300, Denver, Colorado 80202, (“Special Counsel”), collectively (“the Parties”).

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

**1. PROFESSIONAL SERVICES TO BE PERFORMED:** 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, to serve as special legal counsel for the City for matters including but not limited to project procurement strategies, Performance-Based Infrastructure and other project delivery methods, National Western Center assets, Gas to Energy, and such other matters as directed by the City Attorney or her designee. Stephen H. Kaplan, Esq., shall serve as lead attorney for Special Counsel and shall direct the provision of services under this Agreement. 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.

**2. COORDINATION WITH DEPARTMENT OF LAW:**

**a. Use of City Personnel and Coordination.** To provide the best possible legal representation and reduce costs and expenses, Special Counsel agrees whenever possible to utilize the staff of the City Attorney’s Office, together with other City personnel. As directed by the City Attorney, or her designee, Special Counsel agrees to utilize and coordinate with any consultant retained by the City on matters related to Special Counsel’s work. Special Counsel acknowledges that one or more Assistant City Attorneys will be assigned to provide additional legal representation to the City on certain matters. Special Counsel shall submit to the City for approval: budgets, work plans and case plans in such form as may be required by the City’s

Department of Law and in accordance with the Special Counsel Billing Requirements reflected in **Exhibit A.**

**b. Communication Regarding Significant Developments.** Special Counsel shall promptly advise the City Attorney, or her designee, in writing of any significant developments in a matter. Unless a court appearance, settlement conference, or other important event is scheduled less than 72 hours in advance, Special Counsel shall notify the City Attorney, or her designee, of such events at least 72 hours in advance (or within such other time as the City Attorney, or her designee, may agree to) to enable City representatives to attend or participate, if appropriate. When a court appearance, settlement discussion or other important event is scheduled less than 72 hours in advance, Special Counsel shall notify the City Attorney, or her designee, as early as is practicable.

**c. City's Settlement Authority.** Special Counsel may not make any offers of settlement without the prior written approval of the City Attorney, or her designee. Special Counsel shall immediately convey all offers of settlement to the City Attorney, or her designee. The City Attorney, or her designee, has the final authority in making determinations concerning offers of settlement.

**d. Review of Drafts for Litigation Matters.** Special Counsel shall provide the City Attorney, or her designee, with drafts of all significant pleadings or other documents that Special Counsel intends to provide to, or file with, a court or a government agency that may potentially affect the disposition of a matter at least 72 hours before such documents are filed or submitted, or such other time as the City Attorney, or her designee, may agree to.

**e. Copies of Documents.** Special Counsel shall provide the City Attorney, or her designee, with copies of all filed documents, pleadings, discovery responses, key correspondence, and other documents as the City Attorney, or her designee, may request. Additionally, Special Counsel shall provide the City Attorney, or her designee, with electronic copies of all final memoranda, briefs, and other work product produced in the case or matter at the end of the engagement. Special Counsel shall provide electronic documents for each matter in the format requested by the City Attorney, or her designee.

**f. Ownership and Access.** All materials developed, prepared, or acquired during the performance of services under this Agreement, including, without limitation, all finished or unfinished documents, research, pleadings, memoranda, briefs, data, studies, surveys,

drawings, manuals, maps, models, photographs, and reports shall be available to the City upon request. Such materials shall be the exclusive property of the City. All such materials shall be retained by Special Counsel in accordance with Colorado Rules of Professional Conduct, but otherwise for no less than a period of seven (7) years from the conclusion of each matter. At the end of this retention term, the City shall be notified and given sixty (60) days to reclaim such materials prior to destruction by Special Counsel. At all times during the retention term, the City Attorney, or her designee, shall have access to all such materials within 24 hours of a request.

**3. TERM:** The Agreement will commence **upon mutual execution** of this Agreement and will expire on **April 30, 2025** (the “**Term**”). The Agreement may be extended by City providing written notice of extension, prior to expiration of the then-current term, for two (2) extension terms of one (1) year each.

**4. PAYMENT OF FEES AND EXPENSES:**

**a.** The City shall pay to Special Counsel, and Special Counsel agrees to accept as full payment fees not to exceed **ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00)**, which shall be paid from time to time on the basis of monthly statements rendered by Special Counsel to the City in accordance with Section 5 and the Billing Requirements set forth in **Exhibit A**.

**b. Fees.** Special Counsel shall be paid for actual time devoted to work for the City, including meetings with City officials, review, preparation for and appearance on behalf of the City in any negotiations, proceedings, conferences and telephone conferences at the following rates, in accordance with the Billing Requirements set forth in **Exhibit A: \$450.00 per hour for partners, \$340.00 per hour for associates, and \$160.00 per hour for paralegals**. After the first year of the engagement, the foregoing rates may increase by no more than two point five percent (2.5%) annually, subject to the prior written approval of the City Attorney or her designee. Additional attorneys and paralegals employed by Special Counsel providing services under this Agreement may be billed at hourly rates pre-approved in writing by the City Attorney or her designee. In no case shall the hourly rates billed for additional attorneys and paralegals exceed the then-current contracted-for rate for special counsel.

**c. Expenses and Costs.** Any expenses or costs allowed under this Agreement, except as expressly described in Section 5, must be in accordance with the Billing Requirements set forth in **Exhibit A**.

**d. Maximum Contract Amount.**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00)** (the "**Maximum Contract Amount**"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Special Counsel beyond that specifically stated herein. Any services performed beyond those in expressly described in this Agreement are performed at Special Counsel's risk and without authorization under the Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**5. STATEMENT OF SERVICES RENDERED:** The Special Counsel shall submit to the City a monthly invoice, in accordance with this Section 5 and the Billing Requirements set forth in **Exhibit A**, describing all services rendered and costs incurred by Special Counsel under this Agreement for the period covered by said invoice in such format as designated by the City Attorney or her designee. Each such invoice shall contain at least the following information as applicable to the nature of each matter: case number; name or title of the matter; a unique invoice number; Special Counsel's taxpayer identification number; the date and nature of the services rendered; the name of the City Attorney's designee overseeing the matter; Special Counsel's billing contact; the name and position of the provider of such service; the time period covered by the invoice; the date the invoice is issued; and for hourly rate billing: the specific dates of the services, the names of the persons who performed the services billed, their respective hourly rates, the amount of time, in hours and tenths or fractions of hours, attributable to each such service, the total for each line entry, and the total number of hours billed to the City for the period covered by the invoice. 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 monthly invoice of Special Counsel. Any questions regarding the eligibility of a fee, expense, or cost must be resolved in writing by the City prior to the incurrence of such expense by 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, or her designee. The City shall use its best efforts to pay invoices within thirty (30) days of receipt. 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 as Appendix 1 to **Exhibit A** and incorporated by reference. The City reserves the right to require such additional documentation as it deems appropriate to support the monthly invoice of Special Counsel. All invoices shall be submitted to the City Attorney's Office Administrative Billing Team at CAOAdminBilling@denvergov.org. Special Counsel will utilize alternative billing processes, upon City's written request, including, but not limited to, submitting invoices through the Passport Collaborative Portal established by Wolters Kluwer ELM Solutions, Inc. and used by the City and County of Denver for outside legal billing. There is a nominal fee associated for using the Passport Collaborative Portal, which Special Counsel may seek reimbursement from the City for on an annual basis during the Term, not to exceed \$1,530 in any twelve (12) month period.

**6. 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.

**7. 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.

**8. 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, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Special Counsel's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Special Counsel shall cooperate with City representatives and City representatives shall be granted access

to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Special Counsel to make disclosures in violation of state or federal privacy laws. Special Counsel shall at all times comply with D.R.M.C. 20-276.

**9. CONTACT WITH MEDIA:** Special Counsel is not authorized to comment publicly on any City matters, to issue statements or press releases, or to disclose to the media any facts related to a matter Special Counsel is handling without the prior written approval of the City Attorney, or her designee. Special Counsel shall refer any media inquiries to the City Attorney, or her designee. Special Counsel shall cooperate with the City regarding requests for information from the media and, if requested by the City Attorney, or her designee, shall assist with responses to media inquiries.

**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, including any extension thereof, and during any warranty period. 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, Special Counsel 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. 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 may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Special Counsel certifies that the certificate of insurance attached as **Exhibit B**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City's 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, Auto Liability and Excess Liability/Umbrella (if required), 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 insureds.

**d. Waiver of Subrogation.** For all coverages required under this Agreement, Special Counsel's insurer shall waive subrogation rights against the City.

**e. Subcontractors and Subconsultants.** Special Counsel shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain

coverage as approved by the Special Counsel and appropriate to their respective primary business risks considering the nature and scope of services provided.

**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.

**g. Commercial General Liability.** Special Counsel shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

**h. Automobile Liability.** Special Counsel shall maintain 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 minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.

**j. Cyber Liability.** Special Counsel shall maintain Cyber Liability coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. If Claims Made, the policy shall be kept in force, or a Tail policy placed, for three (3) years.

**12. DEFENSE AND INDEMNIFICATION:**

**a.** Special Counsel hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and 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 have been specifically determined by the trier of fact to be 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 which may be 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.

c. Special Counsel should conduct a thorough conflict of interest review prior to performing legal services for the City for any matter under this Agreement. Special Counsel should confirm in writing to the City Attorney, or her designee—preferably within 24 hours, but no later than three (3) business days after receipt of the new matter—that Special Counsel has completed a conflict check, there is no conflict or appearance of a conflict, and that Special Counsel is able to handle all aspects of the legal representation on behalf of the City. If, as a result of the conflict check, there is a conflict or an appearance of a conflict, Special Counsel must (i) identify the conflict for the City Attorney, or her designee, and seek a conflict waiver from the City as required by the Colorado Rules of Professional Conduct or (ii) decline legal representation and maintain as privileged and confidential any information provided by the City. Special Counsel has a continuing obligation to ensure that no conflicts exist with respect to its ongoing representation. Any possible conflict of interest arising during legal representation should be communicated in writing to the City Attorney, or her designee, immediately so the City has an opportunity to address and resolve the issue.

**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: **Denver City Attorney's Office 1437 Bannock St., Room 353 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 A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:**

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. Special Counsel certifies that:

i. At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

ii. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

iii. It will not enter into a contract with a subconsultant or subcontractor that fails to certify to Special Counsel that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

iv. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required 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.

v. If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. Special Counsel shall also 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 worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

**vi.** It will comply with a 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.

**c.** 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 this Agreement is so terminated, Special Counsel shall be liable for actual and consequential damages to the City. Any 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, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation,

gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or 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; with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver; and with the Colorado Rules of Professional Conduct.

**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 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, or her designee. 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. OPEN RECORDS:** Special Counsel acknowledges that information created or exchanged in the course of representation of a governmental entity, such as the City, may be subject to state or local laws regarding public records, including the Colorado Open Records Act (“CORA”) and the Colorado Criminal Justice Records Act (“CCJRA”). Special Counsel is responsible for understanding relevant public records laws and for taking appropriate precautions to identify confidential information, including information protected by the attorney-client privilege or attorney work product protection. Special Counsel also agrees to assist the City in responding to public records requests that apply to information in Special Counsel’s possession.

**34. PROTECTED INFORMATION AND DATA PROTECTION:**

**a. Compliance with Data Protection Laws:** The Special Counsel shall comply with all applicable international, federal, state, local laws, rules, regulations, directives,

and policies relating to data protection, use, collection, disclosures, processing, and privacy as they apply to the Special Counsel under this Agreement, including, without limitation, applicable industry standards or guidelines based on the data's classification relevant to the Special Counsel's performance hereunder and, when applicable, the most recent iterations of § 24-73-101, *et seq.*, C.R.S., IRS Publication 1075, the Health Information Portability and Accountability Act (HIPAA), the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all Criminal Justice Information, the Colorado Consumer Protection Act, and the Payment Card Industry Data Security Standard (PCI-DSS), (collectively, "Data Protection Laws"). If Special Counsel becomes aware that it cannot reasonably comply with the terms or conditions contained herein due to a conflicting law or policy, Special Counsel shall promptly notify the City.

**b. Safeguarding Protected Information:** "Protected Information" means data, regardless of form, that has been designated as private, proprietary, protected, or confidential by law, policy, or the City. Protected Information includes, but is not limited to, employment records, protected health information, student records, education records, criminal justice information, personal financial records, research data, trade secrets, classified government information, other regulated data, and personally identifiable information as defined by §§ 24-73-101(4)(b) and 6-1-716(1)(g)(I)(A), C.R.S., as amended. Protected Information shall not include public records that by law must be made available to the public pursuant to the Colorado Open Records Act § 24-72-201, *et seq.*, C.R.S. To the extent there is any uncertainty as to whether data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the City or an appropriate legal authority. Unless the City provides security protection for the information it discloses to Special Counsel, Special Counsel shall implement and maintain reasonable security procedures and practices that are both appropriate to the nature of the Protected Information disclosed and that are reasonably designed to help safeguard Protected Information from unauthorized access, use, modification, disclosure, or destruction. Disclosure of Protected Information does not include disclosure to a third party under circumstances where the City retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the Protected Information, and the City implements and maintains technical controls reasonably designed to safeguard Protected Information from unauthorized access, modification, disclosure, or destruction or

effectively eliminate the third party's ability to access Protected Information, notwithstanding the third party's physical possession of Protected Information. If Special Counsel has been contracted to maintain, store, or process personal information on the City's behalf, Special Counsel is a "Third-Party Service Provider" as defined by § 24-73-103(1)(i), C.R.S.

**c. Data Access and Integrity:** Special Counsel shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards, guidelines, and Data Protection Laws applicable to Special Counsel's performance hereunder to ensure the security and confidentiality of all data. Special Counsel shall protect against threats or hazards to the security or integrity of data; protect against unauthorized disclosure, access to, or use of any data; restrict access to data as necessary; and ensure the proper use of data. Special Counsel shall not engage in "data mining" except as specifically and expressly required by law or authorized in writing by the City. All data and Protected Information shall be maintained and securely transferred in accordance with industry standards. Unless otherwise required by law, the City has exclusive ownership of all data it discloses under the Agreement, and Special Counsel shall have no right, title, or interest in data obtained in connection with the services provided herein.

**d. Data Retention, Transfer, Litigation Holds, and Destruction:** Using appropriate and reliable storage media, Special Counsel shall regularly backup data used in connection with this Agreement and retain such backup copies consistent with the Special Counsel's data retention policies. Upon termination of the Agreement, Special Counsel shall securely delete or securely transfer all data, including Protected Information, to the City in an industry standard format as directed by the City; however, this requirement shall not apply to the extent Special Counsel is required by law to retain data, including Protected Information. Upon the City's request, Special Counsel shall confirm the data disposed of, the date disposed of, and the method of disposal. With respect to any data in Special Counsel's exclusive custody, the City may request that Special Counsel preserve such data outside of its usual record retention policies. The City will promptly coordinate with Special Counsel regarding the preservation and disposition of any data and records relevant to any current or anticipated litigation, and Special Counsel shall continue to preserve the records until further notice by the City. Unless otherwise required by law or regulation, when paper or electronic documents are no longer needed, Special Counsel shall destroy or arrange for the destruction of such documents within its custody or control that contain

Protected Information by shredding, erasing, or otherwise modifying the Protected Information in the paper or electronic documents to make it unreadable or indecipherable.

**e. Software and Computing Systems:** At its reasonable discretion, the City may prohibit Special Counsel from the use of certain software programs, databases, and computing systems with known vulnerabilities to collect, use, process, store, or generate data and information, with Protected Information, received as a result of Special Counsel's services under this Agreement. Special Counsel shall fully comply with all requirements and conditions, if any, associated with the use of software programs, databases, and computing systems as reasonably directed by the City. Special Counsel shall not use funds paid by the City for the acquisition, operation, or maintenance of software in violation of any copyright laws or licensing restrictions. Special Counsel shall maintain commercially reasonable network security that, at a minimum, includes network firewalls, intrusion detection/prevention, enhancements or updates consistent with evolving industry standards, and periodic penetration testing.

**f. Background Checks:** Special Counsel will ensure that, prior to being granted access to Protected Information, Special Counsel's agents, employees, subcontractors, volunteers, or assigns who perform work under this Agreement have all undergone and passed all necessary criminal background screenings, have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement and Data Protection Laws, and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the data.

**g. Subcontractors and Employees:** If Special Counsel engages a subcontractor under this Agreement, Special Counsel shall impose data protection terms that provide at least the same level of data protection as in this Agreement and to the extent appropriate to the nature of the services provided. Special Counsel shall monitor the compliance with such obligations and remain responsible for its subcontractor's compliance with the obligations of this Agreement and for any of its subcontractors acts or omissions that cause Special Counsel to breach any of its obligations under this Agreement. Unless Special Counsel provides its own security protection for the information it discloses to a third party, Special Counsel shall require the third party to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Protected Information disclosed and that are reasonably designed to protect it from unauthorized access, use, modification, disclosure, or destruction. Any term or condition

within this Agreement relating to the protection and confidentiality of any disclosed data shall apply equally to both Special Counsel and any of its subcontractors, agents, assigns, employees, or volunteers. Upon request, Special Counsel shall provide the City copies of its record retention, data privacy, and information security policies.

**h. Security Breach:** If Special Counsel becomes aware of an unauthorized acquisition or disclosure of unencrypted data, in any form, that compromises the security, access, confidentiality, or integrity of Protected Information or data maintained or provided by the City (“Security Breach”), Special Counsel shall notify the City in the most expedient time and without unreasonable delay. Special Counsel shall fully cooperate with the City regarding recovery, lawful notices, investigations, remediation, and the necessity to involve law enforcement, as determined by the City and Data Protection Laws. Special Counsel shall preserve and provide all information relevant to the Security Breach to the City; provided, however, Special Counsel shall not be obligated to disclose confidential business information, or trade secrets. Special Counsel shall indemnify, defend, and hold harmless the City for any and all claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City in connection with a Security Breach or lawful notices.

**i. Request for Additional Protections and Survival:** In addition to the terms contained herein, the City may reasonably request that Special Counsel protect the confidentiality of certain Protected Information or other data in specific ways to ensure compliance with Data Protection Laws and any changes thereto. Unless a request for additional protections is mandated by a change in law, Special Counsel may reasonably decline the City’s request to provide additional protections. If such a request requires Special Counsel to take steps beyond those contained herein, Special Counsel shall notify the City with the anticipated cost of compliance, and the City may thereafter, in its sole discretion, direct Special Counsel to comply with the request at the City’s expense; provided, however, that any increase in costs that would increase the Maximum Contract Amount must first be memorialized in a written amendment complying with City procedures. Obligations contained in this Agreement relating to the protection and confidentiality of any disclosed data shall survive termination of the Agreement, and Special Counsel shall continue to safeguard all data for so long as the data remains confidential or protected and in Special Counsel’s possession or control.

**35. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Special Counsel consents to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically 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.

**36. 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.

**37. 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.

**38. 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.

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

### **Exhibit List**

**Exhibit A** –Billing Requirements.

**Exhibit B** – Certificate of Insurance.

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

**Contract Control Number:** ATTNY-202262940  
**Contractor Name:** KAPLAN KIRSCH & ROCKWELL LLP

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:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

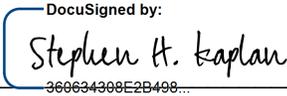
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

ATTNY-202262940  
KAPLAN KIRSCH & ROCKWELL LLP

By:  \_\_\_\_\_  
360634308E2B498...

Name: Stephen H. Kaplan  
(please print)

Title: Partner  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

## SPECIAL COUNSEL BILLING REQUIREMENTS

These Special Counsel Billing Requirements (“**Requirements**”) set forth the procedures that govern the relationship between the CITY AND COUNTY OF DENVER (“**Denver**” or the “**City**”) and its outside legal counsel (“**Special Counsel**”) with respect to billing procedures and related activities under the Special Counsel Agreement (“**Agreement**”).

The City expects Special Counsel and any associated professionals working on City matters to comply with these Requirements. These Requirements supersede any previously provided Requirements and may be amended by the City Attorney from time to time by provision of notice to Special Counsel.

### ***1. Introduction***

These Requirements apply to all Special Counsel retained by the City to provide legal services in connection with litigation and/or transactional matters. Special Counsel shall become familiar with and adhere to these Requirements before and when providing legal services.

The City expects Special Counsel to provide high-quality legal services at reasonable cost, to maintain transparency in billing, and to be mindful of the responsibility to conserve public resources without compromising the quality of services provided.

### ***2. Supervising Attorney and Budget Submission***

For all matters referred to Special Counsel, the City Attorney’s designee (“**Supervising Attorney**”) will supervise and work with Special Counsel. The Supervising Attorney will be directly responsible to the City Attorney for all of Special Counsel’s activities, billings, and payments.

Special Counsel shall contact the Supervising Attorney for any approvals required by these Requirements. Special Counsel should consult frequently with the Supervising Attorney regarding matters Special Counsel is handling so that the City maintains current information about the status of all matters and can provide meaningful input on case strategy and expenditures. As appropriate, and/or requested, Special Counsel will schedule periodic meetings and conference calls with the Supervising Attorney to discuss developments and strategy.

Special Counsel shall provide the Supervising Attorney with a budget for all litigation and transactional matters expected to exceed \$5,000 in legal fees and costs and as requested by the Supervising Attorney. Before providing any legal services, the Supervising Attorney must approve any budget submitted. A separate budget should be submitted for each required matter in a form and as directed by the Supervising Attorney. The budget shall include a good faith estimate of the cost of the services, including an identification of each of the various tasks Special Counsel expects

**Exhibit A**

to perform, the projected number of hours of attorney time and paralegal time needed to complete each task per each timekeeper, and the fees and costs anticipated to be associated with each task. If, during the course of the representation, it appears that Special Counsel may exceed a proposed budget by 10% or more, Special Counsel shall promptly notify the Supervising Attorney, provide a written explanation for the anticipated variance from the budget, obtain the written approval of the Supervising Attorney for any such variance, and submit an updated budget to the Supervising Attorney. At a minimum, Special Counsel should update the budget for each case on a quarterly basis and shall provide a revised budget to the Supervising Attorney on the following schedule for any matters budgeted in excess of \$25,000: January 2, April 1, July 1, and October 1.

Special Counsel shall abide by the budget approved by the Supervising Attorney for each of the matters it is assigned. In no circumstance shall Special Counsel exceed the Maximum Contract Amount, as defined in the Agreement. The Supervising Attorney is not authorized to approve budgets that individually, or in aggregate, exceed the Maximum Contract Amount, as defined in the Agreement.

Special Counsel should use its professional judgment in deciding whether to obtain the prior approval of the Supervising Attorney for a litigation event or transactional decision, where such approval is not specifically required by these Requirements or the Colorado Rules of Professional Conduct. Litigation events that are specified in a plan of litigation or a budget that was previously submitted to and approved by the Supervising Attorney will ordinarily not need to be re-submitted for approval.

All bills submitted by Special Counsel will be reviewed by and are subject to the approval of the Supervising Attorney.

**3. Staffing Philosophy**

- a.** Special Counsel's lead attorney, as designated in Section 1 of the Agreement, and the Supervising Attorney shall agree upon a primary attorney for Special Counsel, which may be the same as the lead attorney designated in Section 1 of the Agreement, for all assigned matters (the "**Primary Attorney**"). The Primary Attorney shall oversee any matter being handled for the City, including the billing and payments. Special Counsel may not substitute a different Primary Attorney without the Supervising Attorney's prior approval in writing.
- b.** Special Counsel shall submit a staffing profile that identifies the partners, associates, paralegals, and other staff who will bill time to each matter. Special Counsel shall minimize staffing changes. Changes and additions to staff are subject to the prior approval of the Supervising Attorney. The City reserves the right to request, and to object to, representation by specific attorneys within Special Counsel's firm.

**Exhibit A**

Excess staffing and staffing with overqualified or underqualified personnel assigned to City matters is not permitted and may result in a reduction of Special Counsel's fees.

- c.* Special Counsel shall select, for each task, an individual suitable for the task and the specific needs of the matter. Each such individual must have appropriate experience in the area in which he or she is performing services and hold all necessary licenses and admissions.
- d.* Special Counsel shall not:
  - (i) Assign unnecessary or duplicative staff to matters.
  - (ii) Charge for any services that duplicate the effort of other assigned staff.
  - (iii) Charge for time of newly assigned attorneys, after a change in personnel, spent to become familiar with the matter, or time spent duplicating work performed by an attorney previously assigned to a matter.
- e.* The selection and retention of expert witnesses, appraisers, consultants, investigators, and other third-party professionals shall be coordinated with and approved by the Supervising Attorney in advance writing. Special Counsel shall provide information regarding the consultant's or expert's area of expertise, description of the services to be provided, hourly rates, and estimates for the services to be provided. Special Counsel shall itemize charges for any such services on its invoices.

**4. Billing**

- a.* Special Counsel shall submit invoices for legal fees and costs on a monthly basis consistent with these Requirements no later than the 15th of each calendar month. All invoices must be submitted consistent with Outside Counsel/Professional Services Invoice Review, attached as **Appendix 1** or as otherwise directed by the Supervising Attorney in writing, and the Invoice Cover Sheet, attached as **Appendix 2**. Invoices shall describe all fees for legal services performed from the prior calendar month. The City reserves the right not to pay for anytime entries billed that do not strictly adhere with the Requirements.
- b.* Special Counsel shall send a separate invoice for each matter.
- c.* Special Counsel shall submit supporting documentation for all allowed reimbursable expenses greater than \$100.
- d.* Unless Special Counsel is otherwise instructed by the City, Special Counsel's invoices shall be addressed and submitted to: [CAOAdminbilling@denvergov.org](mailto:CAOAdminbilling@denvergov.org)

**5. Charges for Services**

- a. Time Charges.* All charges for Special Counsel's legal services must be recorded daily in 0.1 hour increments based upon actual time spent. Time billed in excess of 0.1 hour

**Exhibit A**

must be documented by rounding up or down to the nearest higher or lower increment.

The overall time billed should not exceed the actual time spent. Any tasks performed but not charged should be billed through a zero hour entry.

- b. *Single Entry Timekeeping/Block Billing.*** Each task should be billed in a separate line entry. Grouping multiple activities under a single time charge (block billing) is not allowed. Each item of work shall be associated with a discrete charge.
- c. *Description of Services.*** Each time entry shall include a clear description of the services rendered, including the nature of the task, the purpose and the subject of the task performed, the individual who performed the task, and the amount of time that was spent on a task. The City reserves the right to seek clarification from Special Counsel if it determines an invoice to be vague or unclear and may reduce the amount of time billed for a specific task at its own discretion.
- d. *Intra-Office Conferences.*** Intra-office conferences may be billed when such conferences are held to discuss strategy, case management, and legal issues and result in more efficient legal representation for the City. Special Counsel shall ensure that intra-office conferences are kept to a minimum, that time billed for intra-office conferences accurately reflects time spent on the matter, and that only mandatory staff bill time for such conferences. Charges for intra-office conferences shall describe the reason for the conference and the subject matter of the discussion. Excessive intra-office conferences or staffing may result in a reduction of Special Counsel's fees.
- e. *Multiple Attendance.*** The City will pay for only one attorney to attend meetings, depositions, hearings, court conferences, and trials, unless otherwise approved in advance and in writing by the Supervising Attorney.
- f. *Legal Research.*** The City will only pay for legal research reasonably necessary to complete an assignment. Special Counsel shall consult within its own firm and with the Supervising Attorney prior to conducting extensive legal research to determine whether similar issues have been previously researched by the firm or by the City, particularly with respect to issues such as qualified immunity and standard contract terms utilized by the City that are frequently encountered by the City. Special Counsel is required to use prior research when possible, and in such situations, may charge the City only for updating prior research. Special Counsel shall not initiate research before it is needed unless the Supervising Attorney expressly approves the research in advance.
- g. *Reviewing Files.*** The City will not pay for the review of a file by an attorney who is merely supervising the work of another employee of the firm. Similarly, Special

**Exhibit A**

Counsel shall not bill the City for file review if an event does not precipitate such review (such as a telephone call or receipt of correspondence) or if the file review does not result in the creation of any tangible work product. Any invoice that includes a time entry for “file review” shall include the purpose of the review or that item will not be considered for payment by the City.

- h. Non-Compensable Fees.* Activities that are clerical or administrative in nature—such as opening and closing files, processing invoices, and running conflict of interest checks—are non-compensable and should not be billed by the Special Counsel.
- i. Travel Time:* Special Counsel may bill for limited travel time. The City will reimburse Special Counsel for non-local travel at Special Counsel’s standard contractual hourly rate when approved in advance and in writing by the Supervising Attorney. Special Counsel may not bill for otherwise productive travel time that is not spent on City business (e.g., flight time that is not spent working on a City matter undertaken pursuant to this Agreement). The City will not reimburse travel time for local travel, defined as 100 miles or less from Special Counsel’s office (“**Local Travel**”). Fees for unjustified or excessive travel time may be written down at the Supervising Attorney’s discretion.

**6. Reimbursable Expenses**

Any expenses or costs greater than \$100 that have not been pre-approved in the case budget must be approved in writing by the Supervising Attorney prior to being incurred. Fees and expenses incurred in excess of the approved budget will not be reimbursed. Pre-approved actual, reasonable, and necessary out-of-pocket expenses will be reimbursed at cost without mark-up. All expenses shall be documented, and copies of receipts shall be provided to the Supervising Attorney with Special Counsel’s invoice. Some examples of expenses which may qualify for reimbursement are:

- (i) Messenger Services and overnight or other expedited delivery services.* The City does not expect all documents to be hand-delivered or sent by an overnight or express delivery service, but such services may be used when appropriate under the circumstances per the request of the Supervising Attorney.
- (ii) Photocopying.* Photocopying is reimbursable if performed for Special Counsel by an outside photocopying vendor. In such instances, reimbursement will be made at the lower of Special Counsel’s actual cost or an amount not to exceed 10 cents per page for routine copies. Whenever Special Counsel seeks reimbursement for copying or Bates labeling by an outside photocopying vendor, Special Counsel shall provide the City with a copy of the photocopying vendor’s invoice, which shall state the number of pages of each type copied and the cost per page for each

**Exhibit A**

of these services. In-house copying costs are not reimbursable.

- (iii) **Lodging and Meals.** Lodging and meals are reimbursable only in connection with approved non-local travel, and will be reimbursed at rates no greater than the lesser of the actual cost (without markup) or the maximum amount set forth in the Meals and Incidental Expense Breakdown of the Federal Travel Regulation in effect on the date the expense was incurred, published at:

[www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GS](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GS)

**A BASIC** The City will not reimburse for meals in connection with Local Travel. Supervising Attorney may, if provided sufficient justification, make exceptions to the requirements described in this subpart (iii). Any approval for deviation from the City's standard requirements must be approved in advance writing by the Supervising Attorney specifying all non-compliant lodging and meal costs in detail and reasons therefore.

- (iv.) **Certain Travel Expenses.** Special Counsel shall bill air travel at no higher than the economy or coach fare. Special Counsel shall use its best efforts to make airline reservations in advance so as to take advantage of lower air fares. While on non- local travel, Special Counsel may bill the City for reasonable mileage or for the cost of a mid-sized, non-luxury rental car when necessary and when the cost of a rental car is less than other forms of ground transportation. Special Counsel may seek reimbursement for taxi fares when on non-local travel, but any requests for reimbursement for taxi fares will be closely scrutinized for necessity and reasonableness. For local travel, the Supervising Attorney may, if provided sufficient justification, make exceptions to the requirements described in this subpart (iv) for mileage reimbursements. Any approved mileage reimbursement exceptions for local travel must be approved in advance writing by the Supervising Attorney specifying the reasons therefore.

If Special Counsel's travel is both for the City and for another client or other activities, Special Counsel may bill the City only for the City's pro rata share of travel expenses.

### **7. Non-Reimbursable Expenses.**

Routine administrative expenses are part of Special Counsel's overhead, and are included in Special Counsel's hourly rate structure. Such costs will not be reimbursed by the City. Examples of overhead expenses that the City will not reimburse include:

- (i) Telephone calls, mobile phone charges, utilities, in-house photocopies, postage, secretarial and word processing services, and overtime.

**Exhibit A**

- (ii)** Expenses related to Local Travel, including mileage, parking, or car services.
- (iii)** The cost of computerized legal research services, including, but not limited to: Lexis and Westlaw.

**APPENDIX 1****APPENDIX 1. 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 or Party: \_\_\_\_\_ For Services Rendered In (Month): \_\_\_\_\_

Date Invoice Sent: <sup>(1)</sup> \_\_\_\_\_

City Attorney's Office Supervising Attorney/Manager: \_\_\_\_\_

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

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

## \_\_\_ 1. CONTRACT BILLING STATUS

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

## \_\_\_ 2. AFFECT OF CURRENT INVOICE ON CONTRACT CAP:

Within 15% of Contract Cap? YES NO

\_\_\_ 3. Please provide the anticipated billings (for services) for each of 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 NO

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

YES NO

## \_\_\_ 6. Did you submit documentation for all items greater than \$100?

YES NO N/A

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 15<sup>th</sup> of month following services.

(2) Please explain.

**APPENDIX 2**

**APPENDIX 2. Invoice Cover Sheet**

(Company/Firm Letterhead)

**INVOICE COVER SHEET**

(Invoice Date)

City & County of Denver  
City Attorney's Office  
CAOAdminBilling@denvergov.org

(Invoice Number)

**RE:** (Contract Number)

**MATTER:** (Case Name and Case Number)

or  
(brief description of transactional matter)

**STATEMENT**

FOR LEGAL SERVICES RENDERED DURING THE PERIOD:

(Date(s) of Service Including Year)

**Total (Month):** \$ (Amount Including Costs)

Hours: (Number of Hours) @ (Hourly Rate) = (Total Amount)

Hours: (Number of Hours) @ (Hourly Rate) = (Total Amount)

**Costs:** \$ (Amount)

**Firm:** (Vendor)

(Signature)

**Responsible Attorney:** (Type Name Here)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/20/2022

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 have ADDITIONAL INSURED provisions or 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 License # 0757776</b> <b>HUB International Insurance Services (COL)</b> 2000 S. Colorado Blvd Tower 2, Suite 150 Denver, CO 80222	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext): (303) 291-2004</b> <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS: nancy.rosenbach@hubinternational.com</b>
<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b>	<b>NAIC #</b>
<b>Kaplan Kirsch &amp; Rockwell LLP</b> 1675 Broadway Suite 2300 Denver, CO 80202	<b>INSURER A : Sentinel Insurance Company, Ltd. 11000</b> <b>INSURER B : Hartford Insurance Group 914</b> <b>INSURER C : Argonaut Insurance Company 19801</b> <b>INSURER D : Greenwich Insurance Company 22322</b> <b>INSURER E :</b> <b>INSURER F :</b>

**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. 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	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<b>X</b>	<b>X</b>	<b>34SBAIK0616</b>	<b>7/1/2021</b>	<b>7/1/2022</b>	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>1,000,000</b> MED EXP (Any one person) \$ <b>10,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> \$
<b>A</b>	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			<b>34SBAIK0616</b>	<b>7/1/2021</b>	<b>7/1/2022</b>	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
<b>A</b>	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ <b>10,000</b>			<b>34SBAIK0616</b>	<b>7/1/2021</b>	<b>7/1/2022</b>	EACH OCCURRENCE \$ <b>6,000,000</b> AGGREGATE \$ <b>6,000,000</b> \$
<b>B</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	<b>N/A</b>	<b>X</b>	<b>34WECAA3DU3</b>	<b>7/1/2021</b>	<b>7/1/2022</b>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>1,000,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>
<b>C</b>	<b>Lawyers Professional</b>			<b>121 LPL 0201154-00</b>	<b>7/1/2021</b>	<b>7/1/2022</b>	<b>Each Claim/Aggregate 5,000,000</b>
<b>D</b>	<b>Excess Lawyers Prof.</b>			<b>LPE 9039036 02</b>	<b>7/1/2021</b>	<b>7/1/2022</b>	<b>Each Claim/Aggregate 5,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 City and County of Denver, its elected and appointed officials, employees and volunteers are additional insureds for Business Liability. Waiver of subrogation in favor of the additional insureds is applicable to Business Liability and Workers Compensation. A 30 day notice of cancellation applies.

**Cyber Liability**  
 Insurer: Lloyd's of London  
 Policy Number: W24191210401  
 Effective: 7/1/2021 to 7/1/2022  
 Limits: Additional Breach Response \$3,000,000, Policy Aggregate \$3,000,000

**CERTIFICATE HOLDER****CANCELLATION**

Denver City Attorney's Office  
 c/o Municipal Operations  
 1437 Bannock St., Room 353  
 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