

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and **KELLER ROHRBACK LLP**, a Washington limited liability partnership with its principal place of business located at 1201 Third Avenue, Suite 3200, Seattle, Washington (“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. COORDINATION WITH DEPARTMENT OF LAW: Special Counsel shall fully coordinate all services under the Agreement with the City Attorney or the City Attorney’s designated representative (“City Attorney”). To provide the best possible legal representation and reduce costs and expenses, Special Counsel agrees whenever requested to utilize the staff of the City Attorney’s Office, together with other City personnel. As directed by the City Attorney, 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 may be assigned to provide additional legal representation to the City on certain matters. If applicable, 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 Department of Law.

2. PROFESSIONAL SERVICES TO BE PERFORMED:

a. 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, in pursuing claims for damages and injunctive relief against pharmaceutical companies and/or pharmaceutical distributors who manufacture, market and sell prescription opioids, and other related services as necessary. Special Counsel is ready, willing, and able to provide these services and shall faithfully perform the services pursuant to the Agreement in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals who perform services of a similar nature to those described in the Agreement.

b. Lynn Sarko 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 shall have final authority over the use of all documents to be prepared in the above matters.

c. Multi-Party Representation. The City acknowledges that the Special Counsel will represent not only the City in the litigation, but also other entities, including but not limited to the jurisdictions listed on **Exhibit A** (collectively, “the Colorado Cities and Counties”). By mutual agreement, the Parties may add additional participating jurisdictions to the Cities and Counties after the date this Agreement is executed. City agrees to the Special Counsel’s representation of other plaintiff entities. The City understands that it is one of multiple plaintiffs represented by Special Counsel in the opioid litigation. The City consents to such representation and waives any potential conflict that might arise from such representation. The City further understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and are protected against disclosure to a third party. By entering into this Agreement, the City waives any right it may have to require Special Counsel to disclose to the City any confidences the Special Counsel have obtained from any other plaintiff regarding similar litigation. By this Agreement, the City also authorizes and provides its consent

for the Special Counsel to undertake aggregate settlement discussions of all claims the Special Counsel files on behalf of the Colorado Cities and Counties and any other clients that Special Counsel represents. No city or county's decision to settle claims in the litigation shall be binding on any other city or county.

3. **TERM:** The Agreement will commence August 15, 2018 and will expire on the conclusion of all assigned litigation or on August 15, 2020, whichever occurs later (the "Term").

4. **PAYMENT:**

a. Payment, if any, is based on a contingency fee, with all costs advanced by the Special Counsel, and if applicable, will include costs and expenses incurred by partner firms. Any payment obligation of the City is contingent upon receipt and supplemental appropriation of opioid litigation recovery collected pursuant hereto. Special Counsel shall advance court costs and the expenses of litigation, the repayment of which shall be contingent upon the successful recovery by the City of opioid litigation revenue from defendants pursuant hereto. The percentage below shall be applied to the net amount collected by the City after the subtraction of court costs and expenses. In the event that a court determines the award of attorneys' fees upon resolution of the Special Counsel Matter, Special Counsel will receive an amount equal to the greater of the court-awarded attorneys' fees or the contingency fee. Special Counsel fees shall not exceed an amount equal to \$1000/hour (ONE THOUSAND DOLLARS PER HOUR) multiplied by the number of hours spent on this Special Counsel Matter.

b. Special Counsel shall maintain on a monthly basis a written statement containing a contemporaneous record of the numbers of hours of legal services provided by individual attorneys and paralegals; the nature of such services; and the amount and nature of court costs incurred during each month. This contemporaneous record shall be maintained as Attorney-Client Confidential by the City as it will contain information about the legal strategy in the litigation. In no event shall the contingent fee referenced in Paragraph 4(a) above exceed an average rate of one thousand dollars per hour, as determined by dividing the amount of the contingent fee by the number of hours recorded by the lawyers and other professionals for Special Counsel in the statements sent to the City. Clerical work, including but not limited to transcription, photocopying, and document filing and organization, shall not be recorded or considered for these purposes.

c. If the City obtains a recovery pursuant hereto, Special Counsel shall be reimbursed out of the recovery for its out of pocket costs and expenses incurred in the preparation and presentation of the City claims, including without limitation filing fees, costs of consultants, costs of expert witnesses, costs of obtaining records, deposition expenses, mileage, travel expenses, investigation costs, photographic expenses, copying expenses, lay witness fees, and computer access charges, as outlined in **Exhibit B**. Costs will be billed at actual cost or a standard per unit charge which the parties agree approximates actual cost. If an opposing party is awarded costs and attorney's fees against the City due to the City dereliction, the City shall be responsible for payment thereof.

d. The City payment obligation, whether direct or contingent, extends only to funds appropriated annually by the City legislative body, 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.

e. Calculation of Attorneys' Fees.

(1) Attorneys' Fees are contingent with a flat rate contingency fee of 15% of sums recovered up to \$500 million, total in aggregate for the Cities and Counties. As it is used in this Agreement, the term "sums recovered" includes, but is not limited to, any proceeds recovered as a result of the opioid litigation on behalf of the Cities and Counties, including the creation of a settlement fund. If

more than \$500 million is recovered, then the fee will be 15% on the first \$500 million. On any additional amount over and above \$500 million, the fee on that additional amount will be 10%.

(2) For purposes of calculating the fee, costs and expenses will be deducted from the sums recovered before the fee is calculated.

(3) Any Attorneys' Fees will be divided between Keller Rohrbach and Reilly Pozner in proportion to the lodestar (hourly rates multiplied by hours) for services performed by each firm, with Reilly Pozner to receive no less than 10 percent of the fee attributable to the Cities and Counties, and Keller Rohrbach to receive the remainder, for a total of 100 percent.

5. **TYPE OF ATTORNEYS' FEE AGREEMENTS:** The City has been informed and understands that there are several types of attorney fee arrangements: (1) time based, (2) fixed, (3) contingent, or (4) combinations of these types of fee arrangements. "Time based" means a fee that is determined by the amount of time involved such as so much per hour, day or week. "Fixed" means a fee that is based on an agreed amount regardless of the time or effort involved or the result obtained. "Contingent" means a certain agreed percentage or amount that is payable only upon attaining a recovery regardless of the time or effort involved. The City understands that not all attorneys offer all of these different types of fee arrangements, and the City acknowledges that it has the right to contact other attorneys to determine if they may provide such other fee arrangements for my case or matter. After such consideration or consultation, the City elected the fee arrangement set forth above.

6. **STATEMENT OF SERVICES RENDERED:** Special Counsel shall submit to the City a final disbursement statement identifying the amount of recovery, the phase of litigation during which the case is resolved, and other information and documentation required by the Colorado Supreme Court Rules governing contingent fees, or as requested by the City Attorney. The final disbursement statement must reference the Contract Control number of the Agreement set forth on the City signature page. A partner of Special Counsel shall verify the statement. The final disbursement statement shall be treated as a confidential attorney-client privileged document and will remain as such until and unless the City Attorney otherwise directs. Special Counsel shall also provide status reports and updates regarding the litigation as may be requested from time to time by the City Attorney.

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 Parties may terminate this Agreement at any time, with or without cause upon (30) days written notice. 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, and only out of any opioid litigation recovery collected from distributor or manufacturers companies pursuant to proceedings initiated or defended hereunder.

9. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or 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 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 C**, 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 rights or remedies under this Agreement. The City 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, 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 the 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. Additional Provisions:

- (1) For Commercial General Liability, the policies 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:
- E. 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
 - F. 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. For professional services provided under this contract, the foregoing shall be interpreted to comply with the Colorado and other applicable attorney Rules of Professional Conduct, and in a manner that shall not negate coverage under Special Counsel's malpractice insurance policies.

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 exclusive remedy.

d. Except as otherwise expressly provided in subparagraph 11(a) above, 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 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 D.R.M.C. § 20-107, *et seq.* 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.

c. The City understands that it is one of multiple governmental plaintiffs being represented by Special Counsel in opioid litigation.

d. The City consents to such representation and waives any potential conflict that might arise from such representation of other governmental entities. The City recognizes and agrees that an aggregate settlement of multiple opioid cases at one time may be reached. In this scenario, the claims brought on behalf of the City may be settled only with the City's prior approval. The City has final decision-making authority as to whether to accept any proposed settlement of the City's claims. If the City rejects any such settlement proposal(s), Special Counsel shall continue to represent the City through any trial and appellate proceedings of the City's claims, except as indicated in subparagraph 20(a) above. The City's decision to reject the proposed settlement shall not prevent other clients represented by Special Counsel in opioid-related litigation from accepting an aggregate settlement or otherwise resolving their own claims.

e. Except to the extent indicated above, Special Counsel represents that it has disclosed any and all current or potential conflicts in interest, and are not aware of any pending matters or proceedings in which they represent clients with positions or interests adverse to the City. Special Counsel will notify the City Attorney before undertaking to represent any client in such matters.

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 ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

a. This Agreement is subject to Article 17.5 of title 8 of the Colorado Revised Statutes, and any amendments (the “Certification Statute”).

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 Statute. If Special Counsel violates any provision of this section or the Certification Statute, 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 Statute 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 hearings pursuant to the procedure established by Denver Revised Municipal Code, § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in paragraph 1 hereof.

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 and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, 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 expression or gender identity, 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.

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: Special Counsel shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.

36. DOCUMENT PRESERVATION: City is aware of its obligation to preserve all information, documents and other tangible objects or electronically stored information that is potentially relevant to the Litigation. The City Attorney will inform the City, including those departments and employees who may possess such materials of their obligation to preserve them, taking into consideration any changes in the City's data retention practices that may be required to preserve such materials or

information. Special Counsel are available to assist the City in identifying and preserving relevant documents and electronic files.

EXHIBIT LIST:

EXHIBIT A – List of Colorado Cities and Counties

EXHIBIT B – Reimbursable Costs

EXHIBIT C – Certificate of Insurance

[Signatures appear on the following pages]

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 _____

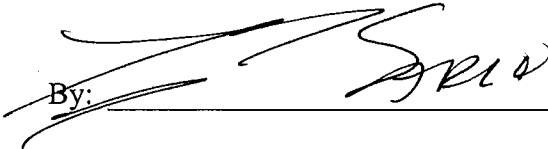
By _____

By _____



Contract Control Number: ATTNY-201843723-00

Contractor Name: KELLER ROHRBACK LLP

By:  _____

Name: Lynn L Sarko
(please print)

Title: Partner
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A

List of Colorado Cities and Counties

Adams County
Arapahoe County
Boulder County
City and County of Broomfield
City and County of Denver
City of Aurora
City of Black Hawk
City of Commerce City
City of Northglenn
Jefferson County
Larimer County
Teller County
Town of Hudson

and other interested Colorado cities and counties

EXHIBIT B

Reimbursable Costs

Federal Express/UPS/Local Courier, etc.
Postage Charges
Facsimile Charges
Long Distance
In-House Photocopying
Outside Photocopying
Hotels
Meals
Mileage
Air Travel
Deposition Costs
Lexis/Westlaw/Bloomberg
Witness and Expert Expenses
Court Fees
Service of Process Fees
Hearing and Trial Transcripts
Ground Transportation (Rental Car, Taxi)
Miscellaneous

