

## 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 **NATHAN DUMM & MAYER PC**, a Colorado professional corporation, with its principal place of business located at 7900 E UNION AVE STE 600 DENVER, Colorado, 80237 (“Special Counsel” or “Contractor”), 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:**

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, to serve as legal counsel and provide legal services on cases and projects for the City of Denver as assigned and directed by the City Attorney. **Marni Kloster** 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.

b. Special Counsel may provide specialized professional services in the form of continual legal counsel for designated cases with and for the City Attorney’s Office, as needs arise and as determined by the City Attorney and as long as the Maximum Contract Amount is not exceeded. These specialized services are set out, along with the rates, identified herein and in attached **Exhibit A**. The City shall authorize specific assignments for Special Counsel in writing in and signed by the City Attorney or the City Attorney’s designee. Such authorized assignments will describe in sufficient detail the services and/or deliverables to be provided, in accordance with **Exhibit B**. Special Counsel shall faithfully perform the work with the standards of care, skill, training, diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in this Agreement.

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

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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 the City Attorney's 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 B**.

b. **Communication Regarding Significant Developments.** Special Counsel shall promptly advise the City Attorney, or the City Attorney's 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 the City Attorney's designee, of such events at least 72 hours in advance (or within such other time as the City Attorney, or the City Attorney's 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 the City Attorney's 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 the City Attorney's designee. Special Counsel shall immediately convey all offers of settlement to the City Attorney, or the City Attorney's designee. The City Attorney, or the City Attorney's 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 the City Attorney's 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 the City Attorney's designee, may agree to.

e. **Copies of Documents.** Special Counsel shall provide the City Attorney, or the City Attorney's designee, with copies of all filed documents, pleadings, discovery responses, key correspondence, and other documents as the City Attorney, or the City Attorney's designee, may request. Additionally, Special Counsel shall provide the City Attorney, or the City Attorney's 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 the City Attorney's 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 the City Attorney's designee, shall have access to all such materials within 24 hours of a request.

3. **TERM:** The Agreement will commence on **February 1, 2023** and will expire on **January 31, 2026** (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 B**.

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  
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the City in any negotiations, proceedings, conferences and telephone conferences at the following rates, in accordance with the Billing Requirements set forth in **Exhibit B: Billing Requirements**,

Position	Rate
Partner	\$250
Associate	\$215
Paralegal	\$135

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 the City Attorney's designee. In no case shall the hourly rates billed for additional attorneys and paralegals exceed the 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 B**.

**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 B**, describing all services rendered and costs incurred by Special Counsel under Nathan Dumm & Mayer PC – Special Counsel Rate Agreement  
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this Agreement for the period covered by said invoice in such format as designated by the City Attorney or the City Attorney's 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 the City Attorney's designee. The City shall use its best efforts to pay invoices within thirty (30) days of receipt. The Special Counsel shall attach to all invoices and billings provided hereunder a completed copy of the Invoice Review document, a blank copy of which is attached as Appendix 1 to **Exhibit B** 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](mailto: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 Nathan Dumm & Mayer PC – Special Counsel Rate Agreement  
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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 the City Attorney's designee. Special Counsel shall refer any media inquiries to the City Attorney, or the City Attorney's designee. Special Counsel shall cooperate with the City regarding requests for information from the media and, if requested by the City Attorney, or the City Attorney's 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.** 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 C**, 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. Business 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 the City Attorney's 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 the City Attorney's 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 the City Attorney's 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

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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, or the City Attorney’s 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 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.

**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** – Scope of Work

**Exhibit B** – Billing Requirements

**Exhibit C** – Certificate of Insurance

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

**Contract Control Number:** ATTNY-202366422-00  
**Contractor Name:** NATHAN DUMM & MAYER PC

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:

\_\_\_\_\_

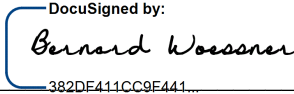
\_\_\_\_\_

By:

\_\_\_\_\_

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

ATTNY-202366422-00  
NATHAN DUMM & MAYER PC

By:  \_\_\_\_\_  
382DE411CC9E441...

Name: Bernard woessner  
(please print)

Title: President  
(please print)

ATTEST: [if required]

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

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

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

**Exhibit A: SOW/Fee Schedule**

Representation and legal counsel of the City and County of Denver and/or its employees in Civil Litigation matters. Assistance with case work as case load exceeds the capacity of the CAO and/or when there is a legal conflict and the matter requires conflict counsel.

Fee Schedule: Hourly Rate

<b>Partner</b>	<b>Associate</b>	<b>Paralegal</b>
\$250	\$215	\$135



**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 \_\_\_\_\_, a \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_, (“Special Counsel” or “Contractor”), 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:**

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, to serve as legal counsel to the City for condemnation negotiations and litigation, and other related legal matters and services, as necessary and directed by the City Attorney. \_\_\_\_\_, 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.

b. Special Counsel may provide specialized professional services in the form of continual legal counsel for designated cases with and for the City Attorney’s Office, as long as the Maximum Contract Amount is not exceeded. These specialized services are set out, along with the rates, identified on attached **Exhibit B**. The City shall authorize specific assignments for Special Counsel in writing in and signed by the City Attorney or her designee. Such authorized assignments will describe in sufficient details the services and/or deliverables to be provided, according to the rates stated in **Exhibit B**. Special Counsel shall faithfully perform the work in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in this Agreement.

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

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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  
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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 \_\_\_\_\_ (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 \_\_\_\_\_ **THOUSAND DOLLARS AND NO CENTS (\$XXX,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: Billing Requirements**, **\$ \_\_\_\_\_ per hour for partners, \$ \_\_\_\_\_ per hour for associates and \$ \_\_\_\_\_ per hour for paralegals.** Additional attorneys and paralegals employed by Special Counsel providing services

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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 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 \_\_\_\_\_ **THOUSAND DOLLARS AND NO CENTS (\$XXX,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,

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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 and subject to The City's Prompt Payment Ordinance § 20-107, et seq., of the Denver Revised Municipal Code (D.R.M.C). The Special Counsel shall attach to all invoices and billings provided hereunder a completed copy of the Invoice Review document, a blank copy of which is attached as Appendix 1 to **Exhibit B** 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.

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**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

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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

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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.

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**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.

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**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

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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

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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.

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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,

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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.

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**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, 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.

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**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

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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 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

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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** – Scope of Work

**Exhibit B** – Billing Requirements

**Exhibit C** – Certificate of Insurance

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

NAME

CCN: ATTN-XXXXXXXX

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

01/06/2023

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

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

<b>PRODUCER</b> USI INSURANCE SERVICES LLC/PHS 34341438 The Hartford Business Service Center 3600 Wiseman Blvd San Antonio, TX 78251	<b>CONTACT NAME:</b> PHONE (866) 467-8730 (A/C, No, Ext):		<b>FAX (A/C, No):</b>
	<b>E-MAIL ADDRESS:</b>		
		<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC#</b>
<b>INSURED</b> NATHAN DUMM & MAYER P.C. 7900 E UNION AVE STE 600 DENVER CO 80237-2996	<b>INSURER A :</b> Hartford Casualty Insurance Company		29424
	<b>INSURER B :</b>		
	<b>INSURER C :</b>		
	<b>INSURER D :</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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liability	X		34 SBA KT4186	12/08/2022	12/08/2023	EACH OCCURRENCE	\$2,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)						\$300,000	
	MED EXP (Any one person)						\$10,000	
	PERSONAL & ADV INJURY						\$2,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COMP/OP AGG	\$4,000,000
A	<b>AUTOMOBILE LIABILITY</b> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			34 SBA KT4186	12/08/2022	12/08/2023	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
	BODILY INJURY (Per person)							
	BODILY INJURY (Per accident)							
	PROPERTY DAMAGE (Per accident)							
	<b>UMBRELLA LIAB EXCESS LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	
							AGGREGATE	
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N					PER STATUTE	OTHER
		N/A					E.L. EACH ACCIDENT	
							E.L. DISEASE -EA EMPLOYEE	
							E.L. DISEASE - POLICY LIMIT	
A	<b>EMPLOYEE BENEFITS LIABILITY</b>			34 SBA KT4186	12/08/2022	12/08/2023	Each Claim Limit	\$2,000,000
							Aggregate Limit	\$4,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Those usual to the Insured's Operations. The City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers, but only as required by a valid written contract, agreement, or permit is an additional insured as provided by the Blanket Additional Insured By Contract, Form SS 00 08 attached to this policy

**CERTIFICATE HOLDER**

City and County of Denver  
 201 W COLFAX AVE  
 DENVER CO 80202-5329

**CANCELLATION**

**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

*Susan L. Castaneda*

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**CERTIFICATE HOLDER COPY**

City & County of Denver  
201 W. Colfax Avenue  
Suite 600  
Denver, CO 80202

**IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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).

**DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT (CONT)





