

THIS SPECIAL COUNSEL AGREEMENT (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a home rule municipal corporation of the State of Colorado (“City”) and **WELLS, ANDERSON & RACE, LLC**, a Colorado limited liability company with its principal place of business located at 1700 Broadway Suite 1020, Denver, Colorado 80290 (“Special Counsel”), collectively “the Parties.”

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

1. PROFESSIONAL SERVICES TO BE PERFORMED: Special Counsel shall provide professional legal services, as provided by Subtitle B of the Denver City Charter at section 6.1.2 and in conformance with the Colorado Rules of Professional Conduct, to serve as legal counsel to the City for overflow and conflicts litigation, and other legal matters and services, as necessary and directed by the City Attorney. William T. O’Connell, Esq., shall serve as lead attorney for Special Counsel and shall direct the provision of services under this Agreement. Special Counsel shall supply the City with a copy of all pleadings, motions, briefs, interrogatories, requests for admissions, requests for production of documents, memoranda, orders and judgments of the court or arbitrator, contracts, agreements, memoranda, or other documents prepared by Special Counsel or any subcontractor hired by Special Counsel under this Agreement. Special Counsel agrees that the City Attorney, or the City Attorney’s designated representative, shall have final authority over the use of all documents to be prepared in the above matters.

2. COORDINATION WITH DEPARTMENT OF LAW:

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

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

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

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

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

f. Ownership and Access. All materials developed, prepared, or acquired during the performance of services under this Agreement, including, without limitation, all finished or unfinished documents, research, pleadings, memoranda, briefs, data, studies, surveys, drawings, manuals, maps, models, photographs, and reports shall be available to the City upon request. Such materials shall be the exclusive property of the City. All such materials shall be retained by Special Counsel in accordance with Rule 1.16A of the 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 on March 1, 2019 and will expire on February 28, 2024 (the “Term”).

4. **PAYMENT OF FEES:**

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 00/100 Cents (\$1,000,000.00)**, which shall be paid from time to time on the basis of monthly statements rendered by Special Counsel to the City in accordance with Section 5 and the Billing Requirements set forth in Exhibit A.

b. **Fees.** Special Counsel shall be paid at the following rates, in accordance with the Billing Requirements set forth in Exhibit A:

Partner	\$225 per hour
Associate	\$180 per hour
Paralegal	\$125 per hour

Additional attorneys and paralegals employed by Special Counsel providing services under this Agreement may be billed at hourly rates pre-approved by the City Attorney, or her designee. In no case shall the hourly rates billed for additional attorneys and paralegals exceed **One Million Dollars and 00/100 Cents (\$1,000,000.00)**, [the contracted-for rate for special counsel].

c. **Expenses and Costs:** Any expenses or costs must be approved in accordance with the Billing Requirements set forth in Exhibit A.

d. **Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, including any exhibits or appendices, the City’s maximum payment obligation is **One Million Dollars and 00/100 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.

(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 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. 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. 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** 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.

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

7. **TERMINATION:** The City may terminate this Agreement at any time, with or without cause. Termination shall be subject to Court consent, if such consent is required. If the

Special Counsel's services are terminated, it shall be paid only for that portion of services satisfactorily completed in accordance with this Agreement at the time of notice of such action.

8. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Special Counsel, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

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.

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

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

11. INSURANCE:

a. General Conditions: Special Counsel agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Special Counsel shall keep the required insurance coverage

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

b. Proof of Insurance – Workers’ Compensation and Professional Liability:

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

c. Additional Insureds:

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

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

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

f. Workers' Compensation/Employer's Liability Insurance: Special Counsel shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Special Counsel expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Special Counsel's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Special Counsel executes this Agreement.

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

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

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

j. Additional Provisions:

(1) For Commercial General Liability, the policies must provide the following:

- A. That this Agreement is an Insured Contract under the policy;
- B. Defense costs are in excess of policy limits;

C. A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and

D. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage:

A. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

B. Special Counsel shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits.

(3) At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Special Counsel will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

12. DEFENSE AND INDEMNIFICATION:

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

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

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

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

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

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

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

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

16. **INUREMENT:** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns, provided assignments are consented to in accordance with the terms of the Agreement.

17. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties.

Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Special Counsel receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

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

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

20. CONFLICT OF INTEREST:

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

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

c. Special Counsel should conduct a thorough conflict of interest review prior to performing legal services for the City for any matter under this Agreement. Special Counsel should confirm in writing to the City Attorney, or her designee—preferably within 24 hours, but no later than three (3) business days after receipt of the new matter—that Special Counsel has

completed a conflict check, there is no conflict or appearance of a conflict, and that Special Counsel is able to handle all aspects of the legal representation on behalf of the City.

If, as a result of the conflict check, there is a conflict or an appearance of a conflict, Special Counsel must (i) identify the conflict for the City Attorney, or her designee, and seek a conflict waiver from the City as required by the Colorado Rules of Professional Conduct or (ii) decline legal representation and maintain as privileged and confidential any information provided by the City. Special Counsel has a continuing obligation to ensure that no conflicts exist with respect to its ongoing representation. Any possible conflict of interest arising during legal representation should be communicated in writing to the City Attorney, or her designee, immediately so the City has an opportunity to address and resolve the issue.

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

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

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

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

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

b. The Special Counsel certifies that:

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

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

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

c. The Special Counsel also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Special Counsel that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
- (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Special Counsel to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Special Counsel will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. § 20-90.3.

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

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

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

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

26. **COMPLIANCE WITH ALL LAWS:** Special Counsel shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and State of Colorado; with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver; and with the Colorado Rules of Professional Conduct.

27. **LEGAL AUTHORITY:** Special Counsel represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution

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

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

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

30. INTELLECTUAL PROPERTY RIGHTS: The City and Special Counsel intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by 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.

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

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

35. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments will be, binding upon the parties and their successors and assigns.

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

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

[Signatures appear on the following pages]

Contract Control Number: ATTNY-201947985-00

Contractor Name: WELLS, ANDERSON & RACE, LLC

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: ATTNY-201947985-00

Contractor Name: WELLS, ANDERSON & RACE, LLC

By:  _____

Name: William T. O'Connell III
(please print)

Title: Attorney/Member of the Firm
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit A

SPECIAL COUNSEL BILLING REQUIREMENTS

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

The City expects Special Counsel and any associated professionals working on City matters to comply with these Requirements. These Requirements supersede any previously provided Requirements.

1. Introduction

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

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

2. Supervising Attorney and Budget Submission

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

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

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

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

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

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

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

3. Staffing Philosophy

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

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

4. Billing

- a.* Special Counsel shall submit invoices for legal fees and costs on a monthly basis no later than the 15th of each month. All invoices should be submitted Outside Counsel/Professional Services Invoice Review, attached as **Appendix 1**, and the Invoice Cover Sheet, attached as **Appendix 2**. Invoices shall include all fees for legal services performed from the prior month. The City reserves the right not to pay for any time entries billed in an untimely manner.
- b.* Special Counsel shall send a separate invoice for each matter.
- c.* Special Counsel shall submit supporting documentation for all allowed reimbursable expenses over \$100.
- d.* Unless Special Counsel is otherwise instructed by the City, Special Counsel's invoices shall be addressed and submitted to: CAOAdminbilling@denvergov.org

5. Charges for Services

- a. Time Charges.* All charges for Special Counsel's legal services should be recorded daily in 0.1 hour increments based upon actual time spent. Time billed in excess of 0.1 hour should be billed by rounding up or down to the nearest higher or lower increment.

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

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

not result in the creation of any tangible work product. Any invoice that includes a time entry for “file review” shall include the purpose of the review or that item will not be considered for payment by the City.

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

6. Reimbursable Expenses

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

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

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

www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC

The City will not reimburse for meals in connection with Local Travel.

- (iv) ***Certain Travel Expenses.*** Special Counsel shall bill air travel at no higher than the economy or coach fare. Special Counsel shall use its best efforts to make airline reservations in advance so as to take advantage of lower air fares. While on non-local travel, Special Counsel may bill the City for reasonable mileage or for the cost of a mid-sized, non-luxury rental car when necessary and when the cost of a rental car is less than other forms of ground transportation. Special Counsel may seek reimbursement for taxi fares when on non-local travel, but any requests for reimbursement for taxi fares will be closely scrutinized for necessity and reasonableness.

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

7. Non-Reimbursable Expenses.

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

- (i) Telephone calls, mobile phone charges, utilities, in-house photocopies, postage, secretarial and word processing services, and overtime.
- (ii) Expenses related to Local Travel, including mileage, parking, or car services.
- (iii) The cost of computerized legal research services, including Lexis and Westlaw.

Exhibit B

Certificate of Insurance

APPENDIX 1

APPENDIX 1. OUTSIDE COUNSEL/PROFESSIONAL SERVICES INVOICE REVIEW

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

Name of Firm: _____

Billing Attorney or Party: _____ For Services Rendered In (Month): _____

Data Invoice Sent: ⁽¹⁾ _____

City Attorney's Office Supervising Attorney/Manager: _____

Matter: _____ Invoice No.: _____

Contract No.: _____ Contract Expiration Date: _____

___ 1. CONTRACT BILLING STATUS

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

___ 2. EFFECTS OF CURRENT INVOICE ON CONTRACT CAP:

Within 15% of Contract Cap? YES NO

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

Amounts: \$ and \$

___ 4. Have there been any developments that call for review of the project work plan or indicate the need to amend the contract cap amount? YES NO

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

YES NO

___ 6. Did you submit documentation for items over \$100?

YES NO N/A

Signature of Firm's Billing Attorney/Party:

Date:

Section below to be completed by CAO Supervising Attorney/Manager

Date Form Reviewed	\$	OK to Pay	Signature
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(1) Please provide explanation if invoice is sent after 15th of month following services.

(2) Please explain.

APPENDIX 2
Invoice Cover Sheet

(Company/Firm Letterhead)

INVOICE COVER SHEET

(Invoice Date)

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

(Invoice Number)

RE: (Contract Number)

MATTER: (Case Name and Case Number)

STATEMENT

FOR LEGAL SERVICES RENDERED DURING THE PERIOD:

(Date(s) of Service Including Year)

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

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

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

Costs: \$ (Amount)

Firm: (Vendor)

(Signature)
Responsible Attorney: (Type Name Here)