

## AMENDATORY AGREEMENT

This **AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **KELLER ROHRBACK L.L.P.**, a Washington Limited Liability Partnership whose address is 1201 Third Avenue, Ste. 3200, Seattle, Washington 98101 (the “Special Counsel”), jointly (“the Parties”).

### RECITALS:

**A.** The Parties entered into an **AGREEMENT** dated September 5, 2018 (the “Agreement”).

**B.** The Parties wish to amend the Agreement to extend the term and expand the scope of services.

**NOW THEREFORE**, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Paragraph 2 of the Agreement entitled **PROFESSIONAL SERVICES TO BE PERFORMED**: is hereby amended by deleting the paragraph in its entirety and replacing it as follows:

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

**a.** Special Counsel shall provide professional legal services, as provided by Subtitle B of the Denver City Charter at section 6.1.2 and in conformance with the Colorado Rules of Professional Conduct, in pursuing claims for damages and injunctive relief against pharmaceutical companies and/or pharmaceutical distributors who manufacture, market and sell prescription opioids, and other related services as necessary (the “Opioid Litigation”) and in pursuing claims for abatement, damages, and injunctive relief against manufacturers of e-cigarettes and related products, including but not limited to JUUL Labs, Inc. f/k/a PAX Labs, Inc.; PAX Labs, Inc.; Eonsmoke LLC; Altria Group, Inc.; Altria Client Services; Altria Group Distribution Company; Nu Mark LLC; Nu Mark Innovations, Ltd.; BLEC, LLC; Intermark Brands, LLC; QSN Technologies, LLC; LOEC, Inc.; Lorillard, LLC; Imperial Brands p.l.c.; Fontem Ventures B.V.; Fontem U.S., Inc.; R.J. Reynolds Vapor Company; Reynolds American Inc.; and British American p.l.c., and other related services as necessary (the “Juul Vaping Litigation”). The Opioid Litigation and Juul Vaping Litigation shall each be referred to herein as a “Matter,” or collectively as the “Matters.” Special Counsel is ready, willing, and able to provide these services and shall faithfully perform the services pursuant to the Agreement in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals who perform services of a similar nature to those described in the Agreement.

**b.** Lynn Sarko shall serve as lead attorney for Special Counsel on the Opioid Litigation and shall direct the provision of such services under this Agreement. Dean Kawamoto shall serve as lead attorney for Special Counsel on the Juul Vaping Litigation and shall direct the provision of such services under this Agreement. Special Counsel shall supply the City with a copy of all pleadings, motions, briefs, interrogatories, requests for admissions, requests for production of documents, memoranda, orders and judgments of the court or arbitrator, contracts, agreements, memoranda, or other documents prepared by Special Counsel or any subcontractor hired by Special Counsel under this Agreement. Special Counsel agrees that the City Attorney shall have final authority over the use of all documents to be prepared in the above matters.

**c. Multi-Party Representation.** The City acknowledges that the Special Counsel will represent not only the City in the litigation, but also other entities, including but not limited to the jurisdictions listed on **Exhibit A** (collectively, “the Colorado Cities and Counties”) and school districts. By mutual agreement, the Parties may add additional participating jurisdictions to the Cities and Counties after the date this Agreement is executed. The City agrees to the Special Counsel’s representation of other plaintiff entities. The City understands that it is one of multiple plaintiffs represented by Special Counsel in the litigation Matters. The City consents to such representation and waives any potential conflict that might arise from such representation. The City further understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and are protected against disclosure to a third party. By entering into this Agreement, the City waives any right it may have to require Special Counsel to disclose to the City any confidences the Special Counsel have obtained from any other plaintiff regarding similar litigation. By this Agreement, the City also authorizes and provides its consent for the Special Counsel to undertake aggregate settlement discussions of all claims the Special Counsel files on behalf of the Colorado Cities and Counties and any other clients that Special Counsel represents. No plaintiff entity’s decision to settle claims in any litigation Matter shall be binding on any other entity.

2. Paragraph 3 of the Agreement entitled **TERM:** is hereby deleted in its entirety and replaced with:

**3. TERM:** The Agreement will commence August 15, 2018 and will expire on the conclusion of all assigned litigation or on December 31, 2022, whichever occurs later (the “Term”).

3. Paragraph 4 of the Agreement entitled **PAYMENT:** is hereby amended by deleting subparagraph a. in its entirety and replacing it, inserting the words “for the Opioid Litigation” in the title of subparagraph e., and inserting a subparagraph f. as follows:

**4. PAYMENT:**

**a.** Payment, if any, is based on a contingency fee related to each specific Matter, with all costs advanced by the Special Counsel, and if applicable, will include

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

e. Calculation of Attorneys' Fees for the Opioid Litigation.

f. Calculation of Attorneys' Fees for the Juul Vaping Litigation.

(1) Attorneys' Fees are contingent with a flat rate contingency fee of 15% of sums recovered up to \$100 million, total in aggregate for the City. As it is used in this Agreement, the term "sums recovered" includes, but is not limited to, any proceeds recovered as a result of the litigation on behalf of the City, including the creation of a settlement fund. If more than \$100 million is recovered, then the fee will be 15% on the first \$100 million. On any additional amount over and above \$100 million, the fee on that additional amount will be 10%.

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

4. Paragraph 8 of the Agreement entitled **TERMINATION**: is hereby deleted in its entirety and replaced as follows:

**8. TERMINATION:** Either Party may terminate this Agreement with respect to any Matter at any time, with or without cause, upon thirty (30) days written notice. Termination with respect to one Matter shall not constitute termination with respect to another Matter. Termination shall be subject to Court consent, if such consent is required. If Special Counsel's services are terminated as to any Matter, it shall be paid only for that portion of services satisfactorily completed in accordance with this Agreement at the time of notice of such action, and only out of any litigation recovery associated with the terminated Matter collected from defendants pursuant to proceedings initiated or defended hereunder. Under no circumstance shall a litigation recovery for one Matter be used to pay for services associated with another Matter.

5. Paragraph 20 of the Agreement entitled Conflict of Interest: is hereby amended by deleting and replacing subparagraphs c. and d. as follows:

**20. CONFLICT OF INTEREST:**

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

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

6. As herein amended, the Agreement is affirmed and ratified in each and every particular.

7. This Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

**Contract Control Number:** ATTNY-201953004-01  
ALFRESCO-201843723-01  
**Contractor Name:** KELLER ROHRBACK LLP

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:** ATTNY-201953004-01  
ALFRESCO-201843723-01  
**Contractor Name:** KELLER ROHRBACK LLP

By:  \_\_\_\_\_  
3A9C6A0C63414D2

Name: Gretchen Cappio  
(please print)  
Title: Partner  
(please print)

ATTEST: [if required]

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

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

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

## **EXHIBIT A**

### **Opioid Clients in Colorado**

Adams County	City of Northglenn
Arapahoe County	City of Sheridan
Boulder County	City of Thornton
City and County of Broomfield	City of Westminster
City and County of Denver	Fremont County
City of Aurora	Jefferson County
City of Black Hawk	Larimer County
City of Brighton	Mesa County
City of Commerce City	Teller County
City of Federal Heights	Town of Hudson
City of Greeley	Tri-County Health Department

and other interested Colorado cities, counties and entities

Dated: October 9, 2019

### **Vaping Clients in Colorado**

Boulder County	Jefferson County
City/County of Denver	Pitkin County
Eagle County	

and other interested Colorado cities, counties and entities

Dated: February 4, 2020