



EXPERT SERVICES ENGAGEMENT AGREEMENT IN THE MATTER OF
XXXX v. City of Colorado Springs

This agreement ("Agreement") is effective as of the XXth day of XXXX, 2024 by and between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City") on behalf of the City of Colorado Springs City Attorney's Office ("City Attorney's Office") and ***** ("Expert"), hereinafter referred to individually as a "party" or together as the "parties." ***** will provide services to City of Colorado Springs as an independent professional. Payment for the services provided by Expert is not dependent upon Expert's findings, or on the outcome of any legal action, mediation, arbitration, or the amount or terms of any settlement of the underlying cause, nor on any contractual arrangement between you and any other person or party.

Scope of Work:

Expert will provide professional legal services for the above matter as described below. No other services are authorized unless prior consent is obtained.

Perform a comprehensive rebuttal report and provide expert testimony, if needed.

To preserve confidentiality under the attorney-client privilege and work product doctrine, these services will be performed under the control and supervision of the City Attorney's Office and, in particular *****. Please inform any and all employees who will be assisting under this Agreement that these services will be performed under the control and supervision of the City's counsel and, therefore, they must treat and mark all information generated in the course of performing their work as "Attorney Client Privileged and Confidential." All written communications concerning this project shall be routed through *****. Written reports or work product should be addressed directly to *****.

Term:

The Agreement shall be effective upon the signature date of the latter of the parties to sign this Agreement and continue through the conclusion of the case or litigation, except as otherwise provided by this Agreement.

Fees and Costs:

The estimated total fees and expenses for this case, depending on the volume of discovery materials that are reviewed by Expert, will be approximately \$*****. This amount will not exceed this amount without the prior written consent of the City Attorney, Mayor or Mayor's Designee. The Expert will not be identified as either a testifying or non-testifying expert as applicable, until the engagement agreement is executed.

The City Attorney's Office agrees to pay Expert fees while performing services under this agreement, at the rates set forth in Expert's fee schedule. Moreover, no other individuals, unless listed in the Fee Schedule and approved by the City Attorney's Office, will be working on this matter.

Preparation of Rebuttal Report

Flat fee \$ _____

Independent Medical Examination:

In office examination \$ ___/hour

Record review and report preparation \$ ___/hour

Cancelled or postponed 11 or more business days prior: Full fee for time spent and 0% for scheduled time.

Cancelled or postponed 10 business days or less: Full fee for time spent and scheduled time.

Independent Medical Examination (Out of town):

Portal to portal \$ ___/half day + expenses

Record review and report preparation \$ ___/hour

Cancelled or postponed more than 15 business days: Full fee for time spent and 0% for scheduled time.

Cancelled or postponed less than 15 business days: Full fee for time spent and scheduled time.

Deposition: (Portal to portal, payable by retainer)

2 hour minimum in office.

4 hour minimum if out of office.

Preparation for Testimony/Attorney conferences: \$ ___/hour

Routine deposition: \$ ___/hour

Video deposition or other special arrangements Add 1 hour for set up and 1 hour for breakdown.

Trial Testimony: (Portal to portal, payable by retainer)

Preparation for Testimony/Attorney Conference: \$ ___/hour

Testimony (in town) \$ ___/half day

Testimony (out of town) \$ ___/half day + expenses

Cancellation Policy for Testimony

If cancelled, full fee for time spent.

Cancelled or postponed more than 15 business days: Full fee for time spent and 0% for scheduled time.

Cancelled or postponed less than 15 business days: Full fee for time spent and scheduled time.

50% deposit for trial testimony and depositions is expected before confirming the date.

Full payment for trial testimony and depositions is expected 3 weeks in advance.

The City Attorney's Office agrees to pay for costs and expenses incurred by Expert while performing services under this agreement. Expert will provide original itemized receipts for all expenses, including supporting documentation for mileage requests. Meals will be reimbursed based upon the GSA per diem rates.

This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-

60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term “appropriation” shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

Discovery

The City Attorney’s Office agrees to furnish Expert with relevant discovery materials in a timely manner, in order for Expert to render informed and objective opinions.

The parties agree that any documents, including but not limited to reports, analysis, memoranda, notations, exhibits or other data prepared by Expert pursuant to this engagement letter shall be the property of the City. Expert agrees to maintain all information made available to Expert by the City in a secure manner. Upon conclusion of the engagement, Expert shall deliver all materials provided to Expert along with all documents prepared by Expert pursuant to this engagement to the City Attorney’s Office for retention. Expert may retain a copy of any City provided documentation and any documentation prepared by Expert for Expert’s own records after the conclusion of this engagement which shall be when the case is ultimately adjudicated or settled. Expert agrees not to disclose or disseminate any documents related to the case to any third party upon conclusion of the engagement.

Confidentiality

Expert agrees to retain all non-public information obtained from the City as confidential and agrees not to release or discuss any of such information unless Expert has obtained the prior written consent of the City or is otherwise forced, compelled, or required to disclose this information by operation of law or applicable government authority.

Indemnification

To the fullest extent permitted by law, Expert agrees that it shall indemnify, defend, and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability resulting from, arising out of, or in connection with Expert’s negligence in performing its obligations or actions under the Agreement.

Scheduled Events:

The City Attorney’s Office will be responsible for notifying Expert of all scheduled events (depositions, trials, hearing testimony and other examinations).

Payments for Services Rendered:

The City is responsible for all payments as outlined in this Agreement, regardless of any arrangements Expert may have with any party or parties Expert represents, their insurance company or any other person, including opposing parties and their counsel.

Expert will issue invoices on a monthly basis for work performed, or whatever other interval Expert deems appropriate. These monthly invoices will provide an itemized accounting of the number of hours of work performed and a brief description of the work completed as is standard procedure for all invoices prepared by Expert. Statements submitted in accordance with this procedure and otherwise in order will be paid promptly by the City.

Independent Contractor

In the performance of the obligations under this Agreement, the parties agree Expert is at all times acting and performing as an independent contractor. The City shall neither have, nor exercise, any control or direction over the manner and means by which Expert performs its obligations, except as otherwise stated in this Agreement. Expert understands and agrees that it is not a City employee. Expert is solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation for benefit to its employees under this Agreement. Further, it is expressly understood and agreed that Expert is not entitled to any City payroll, insurance, unemployment, workers' compensation, retirement, or any other benefits.

Expert shall maintain accurate records of all services provided, amounts billable to and payments made by the City or its enterprises hereunder in accordance with recognized accounting practices and in a format that will permit audit, for a period of not less than three (3) years after payment of the last invoice related to this Agreement. Such records shall be open to reasonable inspection and subject to audit and/or reproduction, during regular business hours, by City or its authorized representatives. The City shall give Expert advance notice of intended audits.

Third Party Beneficiary:

It is specifically agreed between the parties that this Agreement is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Agreement. In requiring insurance under this Agreement, the City specifically does not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., as now written or amended in the future.

Choice of Law:

This Agreement is subject to, and shall be interpreted and performed under, the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs. Expert and the City ensure that their employees, agents, and officers are familiar with, and comply with, applicable federal, state, and local laws and regulations as now written or in the future amended. Any dispute or claim arising from or under this agreement shall be resolved in a Colorado court of general jurisdiction located in El Paso County, Colorado. The parties hereby waive any right to a jury trial. If any provisions of this Agreement shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this contract.

Renewal Option:

This contract may be renewed for up to four (4) additional years by agreement of the parties.

Termination:

The City may terminate this Agreement upon thirty (30) days written notice for any reason. Upon termination of Expert's services by the City, City shall immediately pay all outstanding invoices for services rendered or expenses incurred.

Expert may terminate this Agreement upon thirty (30) days written notice if payments are not made within ninety (90) days of the date the invoice was mailed.

Entire Agreement

This Agreement, together with all appendixes attached, constitutes the entire Agreement between the parties, and all other representations or statements made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties.

Severability

If any provisions of this Agreement shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this contract.

SIGNATURE PAGE TO FOLLOW

In witness whereof, the parties have executed this Agreement as of the date first written above.

Expert

***** Date: _____

Address: *****
***** , ***** *****

City of Colorado Springs, Colorado

By: _____ Date: _____
Wynetta Massey
City Attorney

Division Chief Initials: _____
Assigned Attorney Initials: _____