

ADAMS COUNTY, COLORADO
PURCHASE OF SERVICE AGREEMENT

THIS AGREEMENT ("Agreement") is made this 23rd day of April, 2012, by and between the Adams County Board of County Commissioners, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," and Cohen Milstein Sellers & Toll PLLC, located at 1100 New York Avenue, N.W. Suite 500, West Tower, Washington, D.C. 20005, hereinafter referred to as the "Contractor." The County and the Contractor may be collectively referred to herein as the "Parties".

The County and the Contractor, for the consideration herein set forth, agree as follows:

1. SERVICES OF THE CONTRACTOR:

- 1.1. All work shall be in accordance with the attached RFP and the Contractor's response to the RFP 2011. 152 Ethics and Compliance Officer Services, attached hereto as Exhibit A, and incorporated herein by reference. Should there be any discrepancy between Exhibit A and this Agreement the terms and conditions of this Agreement shall prevail.
- 1.2. Adams County is seeking an experienced professional consultant to act as an independent Ethics Compliance Officer whose duties shall be to receive, evaluate and investigate complaints of unethical conduct within Adams County government and to provide objective and independent analysis to county leadership regarding the interpretation and application of the Adams County Code of Ethics.
- 1.3. The position works to help ensure that the Board of County Commissioners, Elected Officials, Directors, and employees refrain from conduct that is or may be perceived as unethical and adopt a culture of principled public servant leadership that earns and preserves trust and support from employees and the citizens of Adams County.
- 1.4. The Ethics Compliance Officer periodically reviews and makes recommendations for updates and/or changes to the County's Code of Ethics.
- 1.5. The Ethics Compliance Officer collaborates with Human Resources, the County Attorney and others as appropriate to create and maintain an effective Code of Ethics Training Program.
- 1.6. The Ethics Compliance Officer shall receive ethics-related complaints through the county's Transparency Hotline. The Ethics Compliance Officer may also receive information of potential Code of Ethics violations through media reports, or directly from any employee, official, person or entity. The Ethics

Compliance Officer shall evaluate the complaints and in conjunction with the Internal Auditor and County Attorney, provided such evaluation would not jeopardize the independence of any report or investigation, determine whether investigations of complaints are warranted, or whether other actions or referrals are appropriate. If an investigation is determined to be warranted, the Ethics Compliance Officer shall direct the investigation, report findings of the investigation as appropriate to law enforcement agencies and/or the Colorado Independent Ethics Commission, and report findings and issue a recommendation for action to the County Administrator and the Board of County Commissioners.

- 1.7. The Ethics Compliance Officer will consult with the County Attorney and the Human Resources Director for purposes of keeping the county informed of ethics complaints and/or investigations that could have legal and/or employment-related impacts, unless such consultation would jeopardize the independence of the investigation.
- 1.8. The Ethics Compliance Officer reports on a regular basis, and as directed or requested to the Board of County Commissioners and the County Administrator violations or potential violations of the Code of Ethics.

2. **RESPONSIBILITIES OF THE COUNTY:** The County shall provide information as necessary or requested by the Contractor to enable the Contractor's performance under this Agreement.

3. **TERM:**

- 3.1. **Term of Agreement:** The term of this Agreement shall be for three years from the date of this Agreement.
- 3.2. **Extension Option:** The County, at its sole option, may offer to extend this Agreement as necessary for up to two, one year extensions providing satisfactory service is given and all terms and conditions of this Agreement have been fulfilled. Such extensions must be mutually agreed upon in writing by the County and the Contractor, and approved by the Adams County Board of County Commissioners.

4. **PAYMENT AND FEE SCHEDULE:** The County shall pay the Contractor for services furnished under this Agreement, and the Contractor shall accept as full payment for those services as detailed below:

- 4.1. Adams County and Contractor both fully recognize the importance of controlling the costs to the County without interfering with the independence of the Contractor in performing its obligations. For that reason, County and Contractor have agreed to a hybrid fee arrangement which includes elements of traditional hourly billing as well as fixed fee project based billing.

Default billing:

- 4.2. Default billing under this agreement shall be at an hourly rate of \$472.50 per hour for the services of Suzanne M. Dugan, Of Counsel to Cohen Milstein Sellers & Toll PLLC ("Firm"), who will serve as the Independent Ethics Compliance Officer. This is a 30% discount from Ms. Dugan's regular hourly rate.
- 4.3. The hourly rate will be used when the County requests the Contractor to review the Adams County Code of Ethics and make recommendations for revisions, to issue opinions with regard to the application of the Adams County Code of Ethics, or for other similar services.
- 4.4. In the event that additional assistance is required by the Firm's personnel, a 30% discounted hourly rate will be provided from the typical billing rates of paralegals, associates, of counsel, and partners of the Firm, as those rates are set forth in the Firm's written response to the County's Request for Proposals for an Independent Ethics Compliance Officer, which is attached to this agreement, and fully incorporated herein.

Default billing cap:

- 4.5. The cost for services that fall under the default billing category shall not exceed \$50,000 annually without prior approval of the Board of County Commissioners.

Flat fee billing:

- 4.6. Site visits:
- 4.6.1. A flat fee will be billed whenever a site visit is required.
- 4.6.2. The initial site visit will be a 2 day visit during the week of April 23rd, 2012, and the cost will be \$7,500, plus reimbursable travel expenses as are listed herein.
- 4.6.3. All additional required site visits will be conducted on a flat fee basis, with the fee to be negotiated between the Contractor, the County Attorney and the Independent County Auditor, with the understanding that the fee will be based on the time needed for the specific issue and will represent a

significantly discounted price from the default base fee of \$472.50 per hour, plus reimbursable travel expenses as are listed herein.

Investigations:

- 4.7. When an investigation is deemed necessary, it will be conducted on a flat fee basis, with the fee to be negotiated between the Contractor, the County Attorney and the Independent County Auditor, with the understanding that the fee will be based on the time needed for the specific issue and will represent a significantly discounted price from the default billing rate, plus reimbursable travel expenses as are listed herein.

Flat fee billing cap:

- 4.8. The cost for additional site visits, (not including the initial site visit), and/or investigations will not exceed \$50,000 per calendar year without the prior authorization of the Board of County Commissioners. In the event a member of the Board of County Commissioners is the subject of an investigation at the time additional fees are deemed necessary, then the additional costs will be subject to the prior approval of the Deputy County Administrator or his/her designee and the County Finance Director.

Reimbursable travel expenses:

- 4.9. Coach airfare and hotel accommodations at a rate not to exceed the government rate in effect at the time.

Cost controls:

- 4.10. In order to balance the need to control the costs to the County with the need for independence of the Contractor in performing its obligations, the costs of any site visits and/or investigations will be determined by a majority decision between the Contractor, the County Attorney and the Independent County Auditor prior to any work being conducted on a particular issue.

Annual cost not to exceed:

- 4.11. The total annual amount to be paid under this agreement will not exceed \$100,000, representing a maximum of \$50,000 Default Billing and \$50,000 Flat Fee Billing, plus reimbursable travel expenses, without the prior approval of the Board of County Commissioners. In the event the need to exceed \$100,000 per year is the result of an investigation of a member of the Board of County Commissioners, then the additional costs will be subject to the prior approval of the Deputy County Administrator and the County Finance Director.

5. **INDEPENDENT CONTRACTOR:** In providing services under this Agreement, the Contractor acts as an independent contractor and not as an employee of the County. The Contractor shall be solely and entirely responsible for his/her acts, and the acts of his/her employees, agents, servants, and subcontractors during the term and performance of this Agreement. No employee, agent, servant, or subcontractor of the Contractor shall be deemed to be an employee, agent, or servant of the County because of the performance of any services or work under this Agreement. The Contractor, at its expense, shall procure and maintain workers' compensation insurance as required by law. **Pursuant to the Workers' Compensation Act § 8-40-202(2)(b)(IV), C.R.S., as amended, the Contractor understands that it and its employees and servants are not entitled to workers' compensation benefits from the County. The Contractor further understands that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement.**
6. **NONDISCRIMINATION:** The Contractor shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices provided by the local public agency setting forth the provisions of this nondiscrimination clause.
7. **INDEMNIFICATION:** The Contractor agrees to indemnify and hold harmless the County, its officers, agents, and employees for, from, and against any and all claims, suits, expenses, damages, or other liabilities, including reasonable attorney fees and court costs, arising out of damage or injury to persons, entities, or property, caused or sustained by any person(s) as a result of the Contractor's performance or failure to perform pursuant to the terms of this Agreement or as a result of any subcontractors' performance or failure to perform pursuant to the terms of this Agreement.
8. **INSURANCE:** The Contractor agrees to maintain insurance of the following types and amounts:
- 8.1. **Commercial General Liability Insurance:** to include products liability, completed operations, contractual, broad form property damage and personal injury.
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|--------|-------------------|-------------|
| 8.1.1. | Each Occurrence | \$1,000,000 |
| 8.1.2. | General Aggregate | \$2,000,000 |
- 8.2. **Comprehensive Automobile Liability Insurance:** to include all motor vehicles owned, hired, leased, or borrowed.
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| 8.2.1. | Bodily Injury/Property Damage | \$1,000,000 (each accident) |
| 8.2.2. | Personal Injury Protection | Per Colorado Statutes |
- 8.3. **Workers' Compensation Insurance:** Per Colorado Statutes

- 8.4. Professional Liability Insurance: to include coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services.
- 8.4.1. Each Occurrence \$1,000,000
- 8.4.2. This insurance requirement applies only to Contractors who are performing services under this Agreement as professionals licensed under the laws of the State of Colorado, such as physicians, lawyers, engineers, nurses, mental health providers, and any other licensed professionals.
- 8.5. Adams County as "Additional Insured": The Contractor's commercial general liability, comprehensive automobile liability, and professional liability insurance policies and/or certificates of insurance shall be issued to include Adams County as an "additional insured," and shall include the following provisions:
- 8.5.1. Underwriters shall have no right of recovery or subrogation against the County, it being the intent of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses resulting from the actions or negligence of the Contractor.
- 8.5.2. The insurance companies issuing the policy or policies shall have no recourse against the County for payment of any premiums due or for any assessments under any form of any policy.
- 8.5.3. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
- 8.6. Licensed Insurers: All insurers of the Contractor must be licensed or approved to do business in the State of Colorado. Upon failure of the Contractor to furnish, deliver and/or maintain such insurance as provided herein, this Agreement, at the election of the County, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.
- 8.7. Endorsement: Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or canceled without thirty (30) days prior written notice by certified mail, return receipt requested, to the County.
- 8.8. Proof of Insurance: At any time during the term of this Agreement, the County may require the Contractor to provide proof of the insurance coverages or policies required under this Agreement.

9. TERMINATION:

- 9.1. For Cause: Either party shall have the right to immediately terminate this Agreement, upon giving written notice to the other party of such termination and specifying the effective date thereof, if, through any cause, the other party fails to fulfill its obligations under this Agreement in a timely and proper manner, or violates any of the covenants, conditions, or stipulations of this Agreement.
- 9.2. For Convenience: Either party may terminate this Agreement at any time by giving written notice as specified herein to the other party, which notice shall be given at least thirty (30) days prior to the effective date of the termination. If this Agreement is terminated pursuant to this clause, the Contractor will be paid the default hourly or flat fee rate in accordance with Section 4 of this Agreement for the work completed up to the effective date of the termination..

10. MUTUAL UNDERSTANDINGS:

- 10.1. Jurisdiction and Venue: The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The parties agree that jurisdiction and venue for any disputes arising under this Agreement shall be with the 17th Judicial District, Colorado.

Compliance with Laws: During the performance of this Agreement, the Contractor agrees to strictly adhere to all applicable federal, state, and local laws, rules and regulations, including all licensing and permit requirements. The parties hereto aver that they are familiar with § 18-8-301, et seq., C.R.S. (Bribery and Corrupt Influences), as amended, and § 18-8-401, et seq., C.R.S. (Abuse of Public Office), as amended, and that no violation of such provisions are present. Contractor warrants that it is in compliance with the residency requirements in §§ 8-17-101, et seq., C.R.S. Without limiting the generality of the foregoing, the Contractor expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), passed as part of the American Recovery and Reinvestment Act of 2009, effective February 17, 2010, when exposed to or provided with any data or records under this Subcontract that are considered to be "Protected Health Information."

- 10.2. OSHA: Contractor shall comply with the requirements of the Occupational Safety and Health Act (OSHA) and shall review and comply with the County's safety regulations while on any County property. Failure to comply with any applicable federal, state or local law, rule, or regulation shall give the County the right to terminate this agreement for cause.
- 10.3. Record Retention: The Contractor shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall

retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subject at all reasonable times to inspection, review, or audit by authorized federal, state, or County personnel.

- 10.4. Assignability: Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by the Contractor without the prior written consent of the County.
- 10.5. Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver, nor shall it prejudice the waiving party's right to require strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.
- 10.6. Force Majeure: Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.
- 10.7. Notice: Any notices given under this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that a facsimile was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below:

Adams County Attorney's Office 4430 South Adams County Parkway, Brighton, Colorado 80601 Phone: 720-523-6116 Fax: 720-523-6114
Adams County Contact: Mr. Jim Robinson Address: 4430 South Adams County Parkway, Brighton, Colorado 80601 Phone: 720-523-6100 E-Mail: jrobinson@adcogov.org
Cohen Milstein Sellers & Toll PLLC 1100 New York Avenue, N.W. Suite 500, West Tower, Washington, D.C. 20005 Contact: Steven J. Toll and Suzanne M. Dugan Phone: 202-408-4600 E-mail: stoll@cohenmilstein.com sdugan@cohenmilstein.com

- 10.8. Integration of Understanding: This Agreement contains the entire understanding of the parties hereto and neither it, nor the rights and obligations

hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties hereto.

- 10.9. Severability: If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of this Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.
- 10.10. Authorization: Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.

11. CHANGE ORDERS OR EXTENSIONS:

- 11.1. Change Orders: The County may, from time to time, require changes in the scope of the services of the Contractor to be performed herein including, but not limited to, additional instructions, additional work, and the omission of work previously ordered. The Contractor shall be compensated for all authorized changes in services, pursuant to the applicable provision in the Invitation to Bid, or, if no provision exists, pursuant to the terms of the Change Order.
- 11.2. Extensions: The County may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Contractor.

12. COMPLIANCE WITH C.R.S. § 8-17.5-101, ET. SEQ. AS AMENDED 5/13/08: Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, *et. seq.*, as amended 5/13/08, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- 12.1. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.
- 12.2. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 12.3. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

- 12.4. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.
- 12.5. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
- 12.6. If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and the County within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 12.7. Contractor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 12.8. If Contractor violates this Section, of this Agreement, the County may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the County.

CONTRACTOR'S CERTIFICATION OF COMPLIANCE

Pursuant to Colorado Revised Statute, § 8-17.5-101, *et.seq.*, as amended 5/13/08, as a prerequisite to entering into a contract for services with Adams County, Colorado, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract for services and that the Contractor will participate in the E-Verify Program or Department program, as those terms are defined in C.R.S. § 8-17.5-101, *et. seq.* in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

Cohen Milstein Sellers & Toll PLLC

4/23/12 Date


Steven J. Toll
Name (Print or Type)

Steven J. Toll
Signature

Managing Partner
Title

Note: Registration for the E-Verify Program can be completed at: <https://www.vis-dhs.com/employerregistration>. It is recommended that employers review the sample "memorandum of understanding" available at the website prior to registering

IN WITNESS WHEREOF, the Parties have caused their names to be affixed hereto.

Board Of County Commissioners Adams County, Colorado <u>[Signature]</u> Chair	 <u>4-23-12</u> Date
Attest: Karen Long Clerk and Recorder <u>[Signature]</u> Deputy Clerk	Approved as to Form <u>[Signature]</u> Adams County Attorney's Office
 Cohen Milstein Sellers & Toll PLLC <u>[Signature]</u> Name: <u>Managing Partner</u> Title:	 <u>4/23/12</u> Date:
COUNTY OF <u>District</u>) <u>of Columbia</u>)ss. STATE OF COLORADO) Signed and sworn to before me this <u>23rd</u> day of <u>April</u> , 2012 by <u>[Signature]</u> <u>[Signature]</u> Notary Public My commission expires on: <u>August 31, 2016</u>	

