

BOARD OF COUNTY COMMISSIONERS FOR
ADAMS COUNTY, STATE OF COLORADO

RESOLUTION APPROVING CONTINGENCY FEE AGREEMENT BETWEEN ADAMS
COUNTY AND BURG SIMPSON, ELDREDGE, HERSH & JARDINE, P.C., FOR LITIGATION
AGAINST GE JOHNSON CONCERNING DEFECTS AT THE ADAMS COUNTY JUSTICE
CENTER

Resolution 2014-022

WHEREAS, pursuant to a contract, GE Johnson acted as the general contractor for the Phase II Expansion at the Adams County Justice Center; and,

WHEREAS, as a result of GE Johnson's work the Phase II Expansion area has experienced flooding in the basement, causing damage to Adams County and necessitating repairs; and,

WHEREAS, GE Johnson has been notified of the problems and damage at the Adams County Justice Center and has refused to remedy said problems and damage; and,

WHEREAS, by means of the attached Contingency Fee Agreement, Adams County wishes to engage the services of attorneys with specialized knowledge of construction defect issues to pursue the matter against GE Johnson.

NOW THEREFORE BE IT RESOLVED, by the Board of County Commissioners of the County of Adams, State of Colorado, that the Contingency Fee Agreement between Adams County and Burg, Simpson, Eldredge, Hersh & Jardine, P.C., a copy of which is attached hereto, be and hereby is approved.

BE IT FURTHER RESOLVED that the Chair is authorized to execute said Contingency Fee Agreement on behalf of Adams County.

BE IT FURTHER RESOLVED that the Chair is authorized to execute the Notice to Elect Exclusion from C.R.C.P. 16.1 Simplified Procedure associated with said litigation.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Henry _____ Aye
Tedesco _____ Aye
Hansen _____ Aye

Commissioners

STATE OF COLORADO)
County of Adams)

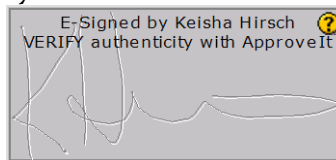
I, Karen Long, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Order is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Adams County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Brighton, Colorado this 13th day of January, A.D. 2014.

County Clerk and ex-officio Clerk of the Board of County Commissioners
Karen Long:



By:



Deputy

SULLAN CONSTRUCTION DEFECT GROUP at
BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC
1875 Lawrence Street, Suite 850
Denver, CO 80202
Telephone: 303-779-0077
Facsimile: 303-779-4924

January 6, 2014

CONTINGENCY FEE DISCLOSURE STATEMENT

Please read the following carefully, which you will be asked to acknowledge having read and understood at the end of this *Contingency Fee Disclosure Statement*: (If only one person is signing this *Contingency Fee Disclosure Statement*, then the terms "I," "me," "my," and "mine" shall replace the terms "we," "us," "our," and "ours").

Type of Attorney Fee Agreements:

We have been informed and understand that there are several types of attorney fee arrangements: (1) Time based, (2) Fixed, (3) Contingent, or (4) combinations of these types of fee arrangements. "Time based" means a fee that is determined by the amount of time involved such as so much per hour, day or week. "Fixed" means a fee that is based upon an agreed amount, regardless of the time or effort involved or the result obtained.¹ "Contingent" means a certain agreed percentage or amount that is payable only upon attaining a recovery regardless of the time or effort involved. We understand that not all attorneys offer all of these different types of fee arrangements, and we acknowledge that we have the right to contact other attorneys to determine if they may provide such other fee arrangements for our case or matter. After such consideration or consultation, we have elected the fee arrangement set forth in the accompanying contingent fee agreement.

Specially Awarded Attorney Fees:

We have been informed and understand that the Court or an arbitrator may sometimes award attorney fees in addition to the amount of recovery being claimed. We understand that the fee agreement we enter into with our attorney should contain a provision as to how any specially awarded attorney fees will be accounted for and handled.

¹ Under a "fixed" attorney fee agreement, downward adjustments to the amount of the fixed fee owed may sometimes be warranted depending on how far the matter has progressed and how much work and time the attorney has committed to the matter.

Costs, Expenses, and Disbursements:

We have been informed and understand that there may be expenses, including costs and disbursements (collectively, "Litigation Costs"), aside from any attorney fee, incurred in pursuing our claims. Examples of such expenses (Litigation Costs) include: fees payable to the court, the costs of serving process, fees charged by expert witnesses, fees of investigators, fees of court reporters to take and prepare transcripts of depositions, copy charges, expert witness and consultation fees, investigator fees, legal research computer terminal and use/data base charges, travel expenses and expenses involved in preparing exhibits. We understand that an attorney is required to provide us with an estimate of such expenses before we enter into an attorney fee agreement and that our attorney fee agreement should include a provision as to how and when such expenses will be paid. We understand that the fee agreement should tell us whether a fee payable from the proceeds of the amount collected on our behalf will be based on the "net" or "gross" recovery. "Net recovery" means the amount remaining after expenses and deductions. "Gross recovery" means the total amount of the recovery before any deductions. The estimated amount of expenses to handle our case will be set forth in the contingent fee agreement.

The Potential of Costs and Attorney Fees Being Awarded to the Opposing Party:

We have been informed and understand that a court or arbitrator sometimes awards attorney fees to the opposing party. We have been informed and understand that should that happen in our case, we will be responsible to pay such award. We understand that the fee agreement we enter into with our attorney should provide whether an award against us will be paid out of the proceeds of any amount collected on our behalf. We also understand that the agreement should provide whether the fee we are obligated to pay our attorney will be based on the amount of recovery *before* or *after* payment of the awarded costs and attorney fees to an opposing party.

Associated Counsel:

We have been informed and understand that our attorney may sometimes hire another attorney to assist in the handling of a case. That other attorney is called an "associated counsel." We understand that the attorney fee agreement should tell us how the fees of associated counsel will be handled.

Subrogation:

We have been informed and understand that other persons or entities may have a subrogation right in what we recover in pursuing our claims. "*Subrogation*" means the right to be paid back. We understand that the subrogation right may arise in various ways, such as when an insurer, warrantor, or a federal or state agency pays money to or on behalf of a claiming party like us, such as under an insurance policy or benefit program, or in situations such as Medicare, Medicaid, workers' compensation, medical/health insurance, no-fault insurance, uninsured/underinsured motorist insurance, and property insurance situations.

We understand that sometimes a third-party like a hospital, physician, attorney, insurer or governmental agency will assert a "lien" (a priority right) on claims such as the ones we are pursuing. *Subrogation rights* and *liens* need to be considered and provided for in the fee agreement we reach with our attorney. The fee agreement should tell us whether the subrogation right or lien is being paid by our attorney out of the proceeds of the recovery made on our behalf and whether the fee we are obliged to pay our attorney will be based on the amount of recovery *before* or *after* payment of the subrogation right or lien.

Alternate Attorney Compensation:

We have been informed and understand that if, after entering into a fee agreement with our attorney, we terminate the employment of our attorney or our attorney justifiably withdraws, we may nevertheless be obligated to pay our attorney for the work done by our attorney on our behalf. The fee agreement should contain a provision stating how such alternative compensation, if any, will be handled.

Colorado's Civil Action Simplified Procedure. We have been advised of the existence and potential applicability of Colorado Rule of Civil Procedure 16.1, "Simplified Procedure for Civil Actions." We understand that the simplified procedure would likely expedite resolution of our claims at less cost than traditional litigation, but that the procedure would limit our monetary recovery in this lawsuit to \$100,000 against any one defendant, including attorney fees, penalties and punitive damages, and limit the availability of certain information-gathering tools to our attorneys. We understand that the Firm reserves the right to terminate its contingency fee agreement if we elect to limit the damages we can obtain in the lawsuit and the Firm concludes that this election no longer makes it cost-beneficial for the Firm to represent us on a contingency fee basis. Having considered the simplified procedure and contacting the Firm with any further questions we had, we are marking with an "X" below our decision as to whether or not to proceed under the simplified procedure:


By signing and returning this *Contingency Fee Disclosure Statement* and our signed *Contingency Fee Agreement*, we direct the Firm to opt out of the simplified procedure and pursue our claims under the normal rules of procedure for this type of lawsuit.

We direct our attorneys not to opt out of the simplified procedure. We understand the limitations on our recovery and the Firm's ability to obtain information before trial under the simplified procedure but elect to proceed in this manner nonetheless.

WE ACKNOWLEDGE THAT WE RECEIVED A COMPLETE COPY OF THIS DISCLOSURE STATEMENT FROM BURG | SIMPSON | ELDRIDGE | HERSH | JARDINE PC, AND HAVE READ IT AND UNDERSTAND IT THIS ____ DAY OF JANUARY, 2014, BEFORE ENTERING INTO ANY FEE AGREEMENT.

Adams County Government
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ADAMS COUNTY GOVERNMENT
By:



Heidi M. Miller
County Attorney

1-13-14

Date

APPROVED AS TO FORM
COUNTY ATTORNEY


**SULLAN CONSTRUCTION DEFECT GROUP at
BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC**

1875 Lawrence Street, Suite 850

Denver, CO 80202

Telephone: 303-779-0077

Facsimile: 303-779-4924

January 6, 2014

CONTINGENCY FEE AGREEMENT

Client's Name: Adams County Government

Mailing Address: c/o Heidi M. Miller
County Attorney
4430 South Adams County Parkway
5th Floor, Suite C5000B
Brighton, CO 80601-8206

Re: Claims relating to construction defects relating to the Adams County Justice Center

This will confirm for your records and ours that the Adams County Government ("Adams County") ("you" or "Client"), has retained the law firm of Burg, Simpson, Eldredge, Hersh & Jardine P.C. (the "Firm" or "Contractor") to provide you with legal services in investigating and pursuing claims relating to problems at the Adams County Justice Center (hereinafter "Courthouse").¹ The Firm will perform these services faithfully and with due diligence as the circumstances allow. You have authorized us to file a lawsuit on Adams County's behalf. The Firm will only bring and maintain claims against those defendants whom we believe, in our judgment, (a) the law and the facts supports the assertion of claims against; (b) it appears to us are tactically prudent to include in the suit; and, (c) whom we believe it is cost-beneficial to pursue claims against due to the likely availability of insurance and/or sufficient assets or sources of income to fully pay a judgment.

1. **Contingency Fee Arrangement.** We have previously discussed alternative fee arrangements, such as fixed fee and hourly (time based) rates. With regard to the subject of hourly rates, which you have not chosen, we informed you that our rates are as follows: \$450.00 for senior attorneys (Scott Sullan, Ronald Sandgrund, Curt Sullan, Mari Perczak and Craig Nuss); \$325.00 for all other associated attorneys; and, \$95.00 for law clerks and legal assistants. While these are the fees charged by our Firm, you have instead chosen the contingent fee arrangement (the "agreement") set out below. We also have previously provided you with a *Contingency Fee*

¹ This agreement is not valid until signed by you and returned to the Firm by you within thirty (30) days after the date at the top of this page.

Disclosure Statement, which you have signed and returned to us, and which you have been provided a copy of for your files.

You agree to pay our Firm (including any associated counsel) as attorney fees **thirty-three and one third percent (33.333%)** of any recovery we are able to obtain for you through negotiation (including mediation), settlement, or trial (including arbitration) of this matter.

You are not liable to pay compensation otherwise than from amounts collected by the Firm, except for Litigation Costs as provided for below, and, in the event this agreement is terminated or our representation ends before your claims are brought to conclusion by settlement or judgment, the "quantum meruit" or similar payment described more fully below.

You agree that the Firm may withdraw from representation in this matter should it be determined in the Firm's judgment that it would not be prudent to maintain the suit because: (a) the law and the facts no longer support the claims being asserted in the lawsuit; (b) it appears to the Firm that it is no longer tactically prudent to maintain the lawsuit; and/or, (c) the Firm believes it is not cost-beneficial to pursue claims asserted in the lawsuit due to the unavailability of insurance and/or sufficient assets or sources of income to fully pay a judgment. Withdraw from representation after the filing of a lawsuit will require approval from the Court pursuant to the Colorado Rules of Civil Procedure.

This Agreement shall not constitute a multi-year fiscal obligation and is subject to annual appropriation by the Adams County Board of County Commissioners. In the event money is not appropriated for this Agreement in any given fiscal year, Adams County may terminate this Agreement or amend it accordingly.

2. **Gross Recovery.** By "recovery" we mean the "gross recovery" obtained, that is, the total amount of the recovery *before* deductions for any expenses, costs or disbursements (collectively "Litigation Costs," as more fully defined below); *before* payment of any awarded costs and attorneys fees to the other side; and, *before* payment of any lien or subrogation rights.

3. **Simplified Procedure.** Effective July 1, 2004, all civil actions filed in Colorado's state courts, including this matter, are potentially subject to a "simplified procedure" that, among other things, likely expedites resolution of civil claims at less cost than traditional litigation (by significantly reducing the Firm's ability to investigate, and obtain documents and examine witnesses regarding, the factual basis of your claims), but also "caps" your monetary recovery in a lawsuit to \$100,000 against any one defendant, including attorney fees, penalties and punitive damages. In our experience, construction defect claims such as yours require significant investigation, document production and deposition testimony and involve claims for recovery well in excess of this \$100,000 per defendant limitation. We believe that any benefits of the simplified procedure, e.g., faster resolution of your claims, are greatly outweighed by the burdens of that procedure, e.g., the damages limitations and restrictions on our ability to adequately investigate and prepare your case

for trial. Moreover, we believe that the damages limitations will impair the Firm's ability to negotiate the most advantageous settlement of your claims before trial.

The decision whether or not to proceed under the simplified procedure is ultimately yours to make. Please consider the simplified procedure, contact us with any further questions you may have, and mark the appropriate check line under **Colorado's Civil Action Simplified Procedure** on pages 3-4 of the *Contingency Fee Disclosure Statement* that is enclosed with this *Contingency Fee Agreement* so that we can proceed properly with your claims. The Firm reserves the right, however, to terminate this agreement if you elect to limit the damages you can obtain in the lawsuit and the Firm concludes that this election no longer makes it cost-beneficial for the Firm to represent you on a contingency fee basis.

4. **Non-Cash Settlement Components.** It is most likely that any resolution of your claims will involve a cash payment. However, there is one scenario (that we can currently envision) for the possible settlement of your claims that involve components that may not involve a direct cash payment to you.

a. **Repair-Based Settlement.** The most likely repair-based settlement scenario is where the defendant(s) agree to settle by hiring a qualified contractor (approved by you) to perform an agreed scope of repair, replacement, restoration and/or mitigation work (the "Repairs") that is paid for by the defendant(s) and/or its/their insurers along with a cash component to reimburse you for attorney fees and Litigation Costs. In this scenario, the Firm will calculate its fee based upon the actual cost of the Repairs as shown in the bid documents of the qualified contractor doing the Repairs together with and including appropriate additions for Repair-related expenses, such as engineering fees, that sometimes are not included in the contractor's bid documents. Payment to our Firm would also include reimbursement of any Litigation Costs advanced by our Firm and not yet reimbursed by you, as more fully discussed below. The total cost of the Repairs and all Repair-related costs, will constitute the "gross recovery" obtained.

In this Repair-based scenario, the Firm's fee is derived by "backing into" the total settlement (cash plus non-cash components) that is being achieved with the hope of netting you the actual Repair cost. Thus, the Firm's fee will be calculated by first determining the total Repair cost, including Repair-related expenses such as engineering costs, as set forth above. We will then multiply the Repair cost by 1.5 and calculate one-third (33.333%) of this adjusted amount as the Firm's fee. By way of example, if there is a Repair-based settlement and the repair contractor and supervising engineer bid the work for \$30,000, including all elements of the Repair, then the Firm's fee is derived by multiplying \$30,000 by 1.5, which equals \$45,000, and then calculating one-third of \$45,000, which equals \$15,000, our fee on this Repair-based component of the settlement, plus reimbursement of any Litigation Costs not yet paid by you and advanced by the Firm on your behalf. By settling for \$45,000 plus the amount of the Litigation Costs advanced by our Firm, you would "net", after re-paying all costs, expenses, and disbursements, the \$30,000 needed for the Repair.

b. **Other Non-Cash Component Scenarios.** In the event it is not reasonably possible to determine our contingency fee on the non-cash portion of any settlement or judgment, the Firm will be entitled to a reasonable fee, taking into account the Firm's billing rates described above, the time devoted by the Firm to work on the case, and any other factors relevant to determining the fair value of the Firm's services that resulted in the non-cash component. The Firm's entitlement to this amount will not affect the Firm's entitlement to its contingency fee on the cash portion of any settlement or judgment in accordance with this agreement. In all cases, you also will be required to pay us for all Litigation Costs incurred by the Firm on your behalf.

5. **Effect of an Award of Attorney Fees To You.** Sometimes the court may award attorney fees in addition to the amount of the recovery being claimed. If the court awards you attorney fees, such award, to the extent it is actually paid by the other side, will become part of the net recovery. We will receive our contingency fee recovery from either the net recovery, or the amount of attorney fees awarded and actually paid, *whichever* is greater, as payment towards our attorney fee. However, to the extent any Litigation Costs are included in the court's award of attorney fees, and are actually paid, those amounts will first be deducted from the gross recovery and credited towards such Litigation Costs.

6. **Effect of an Award of Attorney Fees Against You.** There is always a risk that attorney fees and/or Litigation Costs will be awarded to the other side against you. When attorney fees are awarded, it can be because the court finds a claim groundless, frivolous or vexatious. When Litigation Costs are awarded, it can be because you have not prevailed on your claims or you have failed to timely accept a settlement offer from the other side, which offer is in an amount greater than what is ultimately awarded to you by the court or a jury. You have been advised that it is very difficult to quantify this risk, especially so early in the case. Any award of Litigation Costs or attorney fees against you, regardless of when awarded, will be subtracted from the amount collected before computing the amount of the Firm's contingent fee under this agreement.

Litigation Costs and attorney fees awarded to an opposing party against you before completion of the case must be paid by you when ordered.

7. **Statements for Litigation Costs.** You agree to be responsible to pay all of the expenses, costs and disbursements, i.e., Litigation Costs, (separate and aside from any attorney fees, the payment for which fees is discussed elsewhere in this Fee Agreement) incurred in investigating, filing and pursuing this matter, including expenses for filing of papers with the court, service of process, investigation, legal research computer terminal and use charges, expert witness fees (including engineering, geotechnical, architectural, estimating, surveying, appraisal, economic and insurance experts), travel expenses, copying charges, and deposition charges. Such Litigation Costs are estimated to be potentially up to \$50,000.

Authority is hereby given by you to our Firm to incur the above Litigation Costs, in addition to any costs you may have personally paid to date, which limitations will not be exceeded without your further authority, which authority must be confirmed in writing. In the event we inadvertently

fail to obtain this further authority in advance because of emergency circumstances, such as our being unable to contact you or because expenses are accruing too rapidly for the Firm to contemporaneously maintain an accounting of them (such as when trial approaches and an expert witness is required to perform trial preparation work on short notice) you may agree to retroactively approve these Litigation Costs, or the Firm can reserve its right to attempt to seek reimbursement of these Litigation Costs at a later date. Your signature on the Final Disbursement statement will be considered to constitute such approval.

You are liable for these Litigation Costs regardless of whether any recovery is ultimately obtained. While the Firm may advance some or all of such Litigation Costs on your behalf, you are responsible to pay these Litigation Costs within 45 days of receipt of an invoice for these costs.

8. **Liability for Payment/Termination.** You are not to be liable to pay compensation otherwise than from amounts collected for you by the Firm except as follows:

a. In the event you terminate this contingent fee agreement without wrongful conduct by the Firm which would cause the Firm to forfeit any fee, or if the Firm justifiably withdraws from the representation of you, the Firm may ask the court or other tribunal to order you to pay the Firm a fee based upon the reasonable value of the services provided by the Firm. If the Firm and you cannot agree how the Firm is to be compensated in this circumstance, the Firm will request the court or other tribunal to determine: (1) if you have been unfairly or unjustly enriched if you do not pay a fee to the Firm; and (2) the amount of the fee owed, taking into account the nature and complexity of your case, the time and skill devoted to your case by the Firm, and the benefit obtained by you as derived from the Firm's labors, reputation and creative efforts. Any such fee shall be payable only out of the net recovery obtained by or on behalf of you and the amount of such fee shall not be greater than the fee that would have been earned by the Firm if the contingency described in this agreement had occurred. Litigation Costs shall be payable regardless of whether any recovery or benefit is obtained for you.

b. **Your Recognition of the Risk the Firm is Assuming.** It is agreed and understood that you recognize the significant investment of time and money that the Firm has agreed to make in order to provide the legal services described in this agreement and the economic risks to the Firm inherent in accepting such representation. It is agreed and understood that the Firm is relying on your promise to fully compensate the Firm for its legal services, time, expertise, and Litigation Costs in accordance with the terms of this agreement. You agree to fully cooperate with the Firm in its representation of you by providing necessary documents, scheduling and giving deposition testimony, attending status and settlement conferences, answering written questions sent to us by the defendants, assisting in making some or all portions of the Courthouse available for multiple inspections, etc. You understand that lawsuits are often complicated and drawn-out affairs, requiring additional sacrifices of time on your part beyond your usual duties, and that we are relying on your cooperation and assistance throughout, including your acting as an intermediary for us with the individual homeowners and your management company.

c. **Notice of Firm's Right to File Lien.** It is understood and agreed that upon termination of the Firm's representation for any reason prior to final resolution of all claims, the Firm may file a notice of lien in any litigation or other proceeding that has commenced relating to the subject matter of this agreement for the full amount the Firm believes, in good faith, it is owed under the terms of this agreement. These lien rights are supplementary to any other rights, remedies and claims available to the Firm.

d. **Quantum Meruit Recovery.** In the event all or any part of the Firm's recovery of its attorney fees and Litigation Costs upon termination of this agreement is found to be unenforceable, then the Firm shall be entitled to a *quantum meruit* recovery as allowed by any court of competent jurisdiction, as discussed in sub-paragraph a. above. It is understood and agreed that the Firm likely will not maintain complete or contemporaneous records of its personnel's time in providing legal services due to the contingent nature of its fee, and that you do not object to and expressly approve of the likely need for the Firm to reconstruct its time based on a review of its file and its personnel's recollection. A "*quantum meruit*" recovery means a recovery determined to be owed based on the reasonable value of the Firm's legal services, taking into account the Firm's billing rates described above, the time devoted by the Firm to work on the case, and any other factors relevant to determining the fair value of the Firm's services.

e. **Continuing Right to Attorney Fee.** No termination of this agreement will impair the Firm's right to collect any contingent fee already accrued, earned or otherwise payable to the Firm, nor to reimbursement of all Litigation Costs advanced by the Firm. Any settlement offers or inquiries made by a defendant prior to termination may be considered in evaluating the Firm's right to its contingency fee, as well as any other relevant evidence.

f. **Special Circumstances Surrounding Termination.** If you believe that special circumstances exist surrounding the termination of this agreement, or the amount of the fee owed in the event of the termination of this agreement, or the timing of the fee owed under this agreement, the Firm invites you to bring all these circumstances to its attention so that the Firm may consider them and determine whether a reduction in the fees and Litigation Costs payable by you or a change in the timing of their payment is appropriate.

9. **Subrogation.** "*Subrogation*" means the right to be paid back. Subrogation rights may arise in various ways, such as when an insurer, warrantor, or a federal or state agency pays money to or on behalf of a claiming party like you, such as under an insurance policy or benefit program.

Sometimes a third-party will assert a "lien" (a priority right) on claims such as the ones the Firm is pursuing on your behalf. To date, you have not advised us that you have received notice of the assertion of any subrogation rights or liens by a third party. Any such subrogation right or lien of which we receive notice will be paid directly to the person claiming such lien or right by the Firm out of the proceeds of any recovery made on your behalf. The attorney fee you are obliged to pay us will be based on the amount of recovery *before* payment of the subrogation right or lien. Unless

you have authorized us to make such subrogation payment ahead of time, and such authorization has been confirmed in writing, we will provide you advance, written notice of our intent to make such payment. If you have not objected in writing to us making the payment within ten (10) days of our sending this notice to you, we will make the payment without further notice to you. If you timely object in writing to us making part or all of this payment, we will only pay the portion, if any, you do not object to us paying, and we will deposit the disputed portion with the court and allow the court to decide the final disposition of the funds if an alternate disposition of the funds to your and the third-party's satisfaction cannot be reached.

However, where the applicable law specifically requires the Firm to pay the claims of third parties out of any amount collected for you, the Firm shall have the authority to do so notwithstanding any lack of authorization by you but if the amount or validity of the third party claim is disputed by you, the Firm shall deposit the funds into the registry of an appropriate court for determination. Any amounts paid to third parties will not be subtracted from the amount collected before computing the amount of the contingent fee under this agreement.

10. **Final Disbursement.** Upon final resolution of this matter, a final disbursement statement will be prepared that will reflect the amount of the gross recovery, if any, obtained on your behalf, Litigation Costs incurred in handling this matter, and computation of the contingency fee. If recoveries are made on more than one occasion, interim disbursement statements may be prepared. You are invited to bring to our attention any errors you may believe are contained in these statements and any concerns you have about them. We will rely on your signature on the statement as an expression of your agreement with its contents.

11. **Associated Counsel.** We may associate with another law firm in the pursuit of your claims, with your approval. If this occurs you will be advised of this association and this association *will not increase* the amount of the contingency fee you owe. Such association may become necessary due to the need to consult with a specialist on some aspect of the law. To the extent any tax issues are implicated by this case, or the settlement of your claims, you will need to consult with a tax professional at your own expense in order to identify these issues and determine how to manage them in light of your personal financial situation.

12. **The Firm's Goal.** Our primary goal in pursuing this litigation on your behalf, which we have discussed with you and with which goal you agree, is to try to obtain sufficient funds and/or enforceable and reasonably secured promises from the Defendants to (a) effect those material repairs prescribed by your endorsed professionals to remedy the problems affecting the Courthouse,² and to (b) pay in full your attorney fees and Litigation Costs. We cannot, of course, guarantee such a result, nor can we say that it is probable such a result will be achieved. For example, as we have discussed, the defendants are certain to raise statutes of limitation defenses,

² Or to obtain the performance of needed repairs, or other resolution that is satisfactory to you.

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among other defenses, which may bar or significantly limit your claims. We are hopeful, however, of achieving a result with which you will be satisfied.

13. **Checklist.** Please return to us the following:

- One, fully executed original of your *Contingency Fee Disclosure Statement*.
- One, fully executed original of this *Contingency Fee Agreement*.

Please take care to maintain the confidentiality of all our communications. Please do not discuss this case with anyone without our permission, including the media or any of the defendants or potential defendants, including their employees or counsel. Please limit disclosure of all communications between us and Adams County to current board members and employees.

Authority to Execute Fee Agreement

By signing below you warrant that you are authorized to execute this agreement on behalf of Adams County.

We appreciate the opportunity to provide you legal services, and we look forward to working with you.

Very truly yours,

BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC

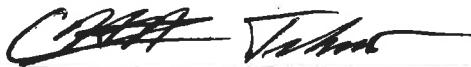


Mari K. Perczak

ACCEPTED this _____ day of January, 2014


ADAMS COUNTY

By: ~~Hoidi M. Miller, County Attorney~~



1-13-14
Date

APPROVED AS TO FORM
COUNTY ATTORNEY



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:

- A. 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.
- B. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- C. 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.
- D. 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.
- E. 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.
- F. 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.

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- G. 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).
- H. 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.

Adams County Government
Fee Agreement
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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:

Burg, Simpson, Eldredge, Hersh & Jardine P.C.
Company Name

1/8/14
Date

Mari K. Perczak
Name (Print or Type)


Signature

Shareholder
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

DISTRICT COURT, ADAMS COUNTY, COLORADO
1100 Judicial Center Dr.
Brighton, CO 80601
(303) 659-1161

Plaintiff:

BOARD OF COUNTY COMMISSIONERS OF ADAMS
COUNTY, a Colorado government entity

Defendants:

G.E. JOHNSON CONSTRUCTION COMPANY, INC. d/b/a GE
JOHNSON CONSTRUCTION COMPANY, INC., a Colorado
corporation; MICHAEL HARMS, Individually

Attorneys for Plaintiff:

Mari K. Perczak, #16288
SULLAN², SANDGRUND, PERCZAK & NUSS P.C.
1875 Lawrence Street, Suite 850
Denver, CO 80202
Phone: 303-779-0077; Fax: 303-779-4924
Email: mperczak@vsss.com

Case No. 2013CV32799

Div.: A

NOTICE TO ELECT EXCLUSION FROM C.R.C.P. 16.1 SIMPLIFIED PROCEDURE

Simplified Procedure under C.R.C.P. 16.1 is intended to be a less expensive and faster method of handling civil cases and applies where the amount sought against each party is \$100,000 or less, see C.R.C.P. 16.1(c). The Rule requires early and full disclosure of the information that each party has about the dispute and addresses what evidence will be introduced at trial.

The Party and attorney signing this Notice hereby elect to exclude this case from the Simplified Procedure under C.R.C.P. 16.1. This election is being filed with the Court no later than the time provided by C.R.C.P. 16.1(d).

IT IS UNDERSTOOD THAT ONCE THIS NOTICE OF EXCLUSION IS FILED WITH THE COURT, THE PROCEDURES OF C.R.C.P. 16, CASE MANAGEMENT AND TRIAL MANAGEMENT WILL APPLY TO THIS CASE.

This Notice must be signed by the Party and by the attorney.

