

BNC METROPOLITAN DISTRICT NO. 3

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Tel: 303-987-0835 • 800-741-3254
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<https://bncmetrodistrict3.com/>

NOTICE OF SPECIAL MEETING AND AGENDA

<u>Board of Directors</u>	<u>Office</u>	<u>Term/Expires</u>
Janis L. Emanuel	President	2025/May 2025
Robert J. Bol	Treasurer	2027/May 2027
Theodore Antenucci	Assistant Secretary	2025/May 2025
VACANT		2027/May 2025
VACANT		2027/May 2025
David Solin	Secretary	(not an elected position)

DATE: Tuesday, November 5, 2024

TIME: 12:00 p.m.

PLACE: Zoom Meeting: The meeting can be joined through the directions below:
**Individuals requiring special accommodation to attend and/or participate in the meeting please advise the District Manager (dsolin@sdmsi.com or 303-987-0835) of their specific need(s) before the meeting.*

<https://us02web.zoom.us/j/5469119353?pwd=SmtlcHJETFhCQUZEcVBBOGZU3Fqdz09>
Meeting ID: 546 911 9353
Passcode: 912873
Dial In: 1-719-359-4580

I. PUBLIC COMMENTS

- A. Members of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes per person.
-

II. ADMINISTRATIVE MATTERS

- A. Present disclosures of potential conflicts of interest.
-
- B. Confirm quorum, location of the meeting and posting of meeting notices. Approve Agenda.
-

III. FINANCIAL MATTERS

- A. _____

IV. LEGAL MATTERS

- A. Review and consider approval of the engagement of Wheeler Trigg O'Donnell LLP as Special Counsel in connection with the dispute involving BNC Metropolitan District Nos. 1 and 2 (enclosure).
-

V. OTHER MATTERS

- A. _____

- VI. ADJOURNMENT **THERE ARE NO MORE REGULAR MEETINGS SCHEDULED FOR 2024.**

October 15, 2024

BNC Metropolitan District No. 3
c/o Paula Williams, General Counsel
McGeady Becher Cortese Williams P.C.
pwilliams@specialdistrictlaw.com

Re: Engagement Letter
BNC Litigation

Dear Paula:

We are pleased that you have selected Wheeler Trigg O'Donnell LLP to act as counsel to BNC Metropolitan District No. 3 (the "Client") in connection with the dispute involving BNC Metropolitan District No. 1 and BNC Metropolitan District No. 2. This letter is to summarize and confirm the terms and conditions we have discussed concerning our firm's representation.

SCOPE OF OUR REPRESENTATION

We have been engaged to represent the Client solely in connection with the above-described litigation, and our representation is limited to the performance of legal services related to the litigation. Our representation does not involve an undertaking to represent the Client or its interests in any other matter, including but not limited to a review of the Client's insurance policies to determine the possibility of coverage for this matter or the necessity of notice to the Client's insurance carriers. We have not been engaged to provide business, investment, tax, or accounting advice.

RETAINERS, FEES AND BILLING PROCEDURES

Our fees for legal services will be determined by our hourly rates for the time spent. Katie Reilly's discounted billing rate is \$900 per hour. My discounted billing rate is \$700 per hour. Discounted hourly rates for other professionals assisting in this matter are: \$500 for associates; and \$275 for paralegals. In addition, you will be responsible for the payment of all out-of-pocket costs and disbursements advanced or incurred by our firm. Such costs and disbursements may include delivery charges, reproduction and costs, computer research charges, filing fees, court reporter fees, and travel expenses. Fees for investigators, consultants, and experts generally will not be paid by us, but will be billed directly to the Client.

Our firm prepares billing statements on a monthly basis for all legal services rendered. Unless you request a different format, each statement will provide a day-by-day description of

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each biller who performed work for you, how much time was billed (to the nearest tenth of an hour) and that biller's hourly rate. A monthly recap of all billers' time and fees also is provided, together with a listing of costs and disbursements. Payment is due within 30 days after the statement is mailed. We may assess interest at the rate of one percent per month for any amounts that are over 90 days past due.

Please note that we periodically adjust our billing rates. Adjustments to billing rates are generally made on an annual basis, and typically take effect on January 1. Any changes to billing rates will be reflected in the first billing statement that includes charges for services at any such adjusted rates.

At this time, it is difficult to predict the exact cost of the legal services we will be providing on your behalf. As you no doubt are aware, the quality of the legal services performed often is a direct function of the time and effort devoted to such legal services. We will endeavor to render quality legal services at reasonable expense to you, and will consult with you as significant legal costs can be anticipated. Further, our monthly billing procedure should allow you to remain current with respect to the legal fees being incurred in this matter. It is expressly understood that the Client's obligation to pay the firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

CLIENT RESPONSIBILITIES

You agree to cooperate fully with us and to provide promptly all information known or available to you relevant to our representation. You agree to make the Client's representatives available to meet with firm personnel and to attend trial, hearings, depositions, and other proceedings, and to commit the appropriate personnel and sufficient resources to meet the Client's discovery obligations. You also agree to pay our statements for services and expenses as described herein. So that we may maintain continuous contact with you throughout the representation, you agree to notify us immediately if there is any change in your mailing address, email address, or telephone number.

Because this matter involves litigation or threatened litigation, you have an obligation to preserve hardcopy documents and electronic data that might be relevant to the claims and defenses in this matter. The destruction of documents or other information, even if accidental, can result in sanctions affecting the merits of the case. Accordingly, you must take reasonable steps to preserve, and to prevent the destruction of, hard copy files, emails, recorded voicemails, backup tapes, hard disks and other storage media that may contain potentially relevant material. These reasonable steps can include discontinuing data destruction and backup tape recycling policies. You agree to work with us in implementing any litigation holds that we may deem necessary, and in monitoring your efforts to identify, retain, and produce relevant documents.

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TERMINATION OR CONCLUSION OF ENGAGEMENT

You may terminate our representation at any time, with or without cause, by notifying us. If such termination occurs, your papers and property will be returned to you promptly upon request, and upon receipt of payment for outstanding fees and costs. Our own files pertaining to the case will be retained. Your termination of our services will not affect your responsibility for payment of legal services rendered and costs and disbursements incurred before termination and in connection with an orderly transition of the matter.

We are subject to the rules and codes of professional responsibility for the jurisdictions in which we practice, which list several types of conduct or circumstances that require or allow us to withdraw from representing a client, including for example: nonpayment of fees or costs, misrepresentation or failure to disclose material facts, refusal to cooperate or communicate with us, action contrary to our advice, and conflict of interest with another client. We will try to identify in advance and discuss with you any situation which may lead to our withdrawal and if withdrawal ever becomes necessary we shall immediately give you written notice of our withdrawal.

We will retain our files relating to this matter for a minimum of seven years following the conclusion of our representation of you in this matter. For various reasons, including the minimization of unnecessary storage expenses, we may destroy files after this period of time without further notice to you, unless we are aware of other pending or threatened legal proceedings that relate to the matter on which we have been retained.

After the conclusion of the above-referenced litigation, changes may occur in the applicable law or regulations that could have an impact upon the Client's future rights and liabilities. Unless the Client engages us after completion of the litigation to provide additional legal advice on issues arising from the litigation, the firm has no continuing obligation to advise the Client with respect to future legal developments. Our representation will terminate upon conclusion of our work in connection with the matter described above.

CONFLICTS

This firm represents many other companies and individuals. The firm also represents other law firms, some of who may represent other parties in matters in which you are involved. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters may be directly or indirectly adverse to you. We agree, however, that the prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if

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known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

We have been engaged to represent only the person or entity identified as the Client in this engagement letter. Consistent with ethical rules and case law, our representation of an insured does not create an attorney-client relationship between our firm and the insured's insurance carrier. Our representation of the Client does not extend to any affiliated individuals or entities. For example, if the Client is a corporation, our representation does not include any of its parents, subsidiaries, or other affiliates, or any individual employees, officers, directors, shareholders, insureds, or other constituents of the Client. If the Client is an individual, our representation does not include the Client's spouse, siblings, or other family members, or any entities in which the Client owns an interest. Because our representation of the Client in this matter does not create any attorney-client relationship between the firm and any affiliates or individual constituents of the Client, you agree that the representation will not give rise to any conflict of interest in the event other clients of the firm are adverse, or become adverse, to any affiliates or individual constituents of the Client.

ARBITRATION OF DISPUTES

If you disagree with the amount of our fee or any aspect of our legal services, please do not hesitate to discuss your concerns frankly with me. Our experience has been that such disagreements can be resolved to the satisfaction of both sides with little inconvenience or formality. If such efforts are not successful, however, both the firm and you agree that any dispute relating to our fees or the legal services performed pursuant to this agreement will be submitted to binding arbitration in Denver, Colorado, pursuant to the Colorado Uniform Arbitration Act and the Rules of the American Arbitration Association ("AAA"). The arbitration proceeding will be conducted by the Judicial Arbitrator Group ("JAG") or, if JAG is unable to conduct the proceeding, by the AAA. Any decision in such arbitration proceeding will be final and binding on the Client and the firm, except as otherwise provided by law.

Please understand that, under Colorado law, punitive damages are not recoverable by any party subject to arbitration, nor are jury trials available in arbitration. Judgment upon the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction.

Each Party will bear its own attorneys' fees, costs, and expenses (including filing fees). The parties will also bear the cost of arbitration (including arbitrator fees) pursuant to an agreed-upon allocation. Absent an agreement about allocation, the defendants (individually and/or collectively) shall bear no more than half the cost of arbitration.

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If the total amount of the arbitration award is \$5,000,000 or more, inclusive of interest, the parties shall have the right to appeal the award to a panel of three arbitrators comprised of former appellate court judges pursuant to the AAA appellate rules. The appellate arbitrators shall be mutually acceptable to all parties. The appellate arbitration panel shall review the facts and law pursuant to the standard of review that would apply if this proceeding was heard by an appellate court sitting in Colorado.

No demand for arbitration may be sustained after the date when the institution of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statutes of limitation or statute of repose if this matter was filed in court. The arbitrator(s) are authorized to dismiss the arbitration at any stage based on a determination that the claim is time barred or for any other legally or factually supported reason.

You should understand that in agreeing to arbitrate any disputes, both parties will be waiving important rights related to a trial in a court, including the right to a jury, the right to broad discovery, and the right to appeal any award less than \$5,000,000.00. Any outcome reached in arbitration will be confidential, and attorney fees may be awarded against the non-prevailing party, even where they might not otherwise be allowed in a court of law.

**THE DECISION WHETHER TO ENTER INTO THIS AGREEMENT FOR
ARBITRATION IS SOLELY A MATTER FOR YOUR
DETERMINATION. WE URGE YOU TO SEEK THE ADVICE OF
INDEPENDENT COUNSEL OF YOUR CHOOSING BEFORE YOU
AGREE TO THIS PROVISION.**

This letter constitutes the entire understanding and agreement between the Client and the firm regarding the firm's engagement in this matter. Your affiliates and subsidiaries will be considered firm clients for purposes of conflicts only if identified by a list you provide to us. You agree that when Client is an insurance company, our firm may be adverse to insureds of Client in unrelated matters unless such representation would be precluded by applicable rules of professional conduct.

You are entitled, and encouraged, to seek the advice of independent counsel with regard to the terms and conditions of this letter. Your signature below indicates that you have sought such advice or that you are waiving your right to do so.

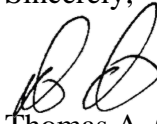
If the foregoing terms and conditions accurately summarize and confirm your understanding of our proposed attorney-client relationship, please indicate your approval and acceptance by returning a signed and dated copy of this letter by email. Unless we hear otherwise from you, we will proceed with our representation pursuant to the terms described in this letter, with the understanding that the terms are acceptable to you.

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Again, I would like to emphasize that we are looking forward to working with you towards the successful resolution of this matter.

Please do not hesitate to call me if you have any questions or comments regarding any of the matters set forth in this letter.

Sincerely,



Thomas A. Olsen

TAO:cj

AGREED AND ACCEPTED:

BNC Metropolitan District No. 3

By: _____

Its: General Counsel