

EMPLOYEE LEGAL REPRESENTATION AGREEMENT

This Agreement is made on _____ between the County of Boulder, State of Colorado (“the County”) and Don Shepard, individually, (the “Public Employee”). In this Agreement, Boulder County and the Public Employee may be individually referred to as a “Party” or collectively referred to as the “Parties.”

Recitals:

A. The County is a public entity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

B. The County, under C.R.S. § 24-10-110(1), is required to assume the cost of the defense of its public employees where a claim against its public employee “arises out of injuries sustained from an act or omission of such employee occurring during the performance of [the public employee’s] duties and within the scope of [the public employee’s] employment” or terms of office except where the act or omission is willful and wanton.

C. It is common for plaintiffs or their attorneys to allege that public employees acted outside the course and scope of their employment or that they acted willfully and wantonly, and courts often dismiss such claims before or at trial.

D. The County anticipates litigation based on the Complaint and Jury Demand filed by counsel representing Kyle Termin September 6, 2022 (the “Complaint”), in which the Public Employee was named as a defendant to a claim or claims concerning the use of excessive force against Mr. Termin at the Boulder County Jail on April 4, 2022. At the time the events at issue in the Complaint occurred, the Public Employee was a public employee of the County as defined in C.R.S. § 24-10-103(4).

E. Mr. Termin has alleged or the allegations in the Complaint imply that the Public

Employee acted outside the course and scope of the Public Employee's employment and/or acted willfully and wantonly.

F. The County's investigation to date has revealed to the satisfaction of the Boulder County Attorney that the Public Employee acted within the course and scope of the Public Employee's employment and did not act willfully and wantonly.

G. If the County or other county officials or employees have been named in the Complaint and are or will be represented by the County Attorney, the County has determined that the interests of those Parties represented by the County Attorney in this matter are aligned with the Public Employee's interests, and the Public Employee has determined that the Public Employee's interests are aligned with those of the other named individuals represented by the County Attorney. The Parties are aware of the potential for conflicts of interests in cases involving the representation of multiple defendants and waive any potential conflicts.

H. The Public Employee has consented to be jointly represented with Joe Pelle and Mario Moore, also named in the Complaint, by the County Attorney as set forth in the Addendum to this Agreement. Please note the County Attorney does not represent former Deputy Gene Taylor.

I. The Public Employee represents that, to the extent requested by the County, the Public Employee has fully cooperated in the County's investigation and has not withheld any material information or evidence.

J. The Public Employee is aware that the Public Employee may engage another attorney to represent the Public Employee at the Public Employee's expense rather than entering into this Agreement.

K. Under C.R.S. § 24-10-118(5), the County has determined that it is in the public

interest to bear the cost of defense for the Public Employee against all asserted claims for damages and other relief.

L. Please be advised that if you are a POST-certified peace officer, this lawsuit may impact your certification(s) pursuant to Colorado Police Officers Standards and Training (P.O.S.T.). Colorado law requires POST to take action on a peace officer's certification if the peace officer is found civilly liable for the use of unlawful physical force or is found civilly liable for failure to intervene in the use of unlawful force. If the use of force at issue did not result in serious bodily injury or death, C.R.S. 24-31-904(1)(a) requires POST to suspend the peace officer's certification for at least one year. If the use of force resulted in serious bodily injury or death, C.R.S. 24-31-904(2)(a) requires POST to permanently revoke that peace officer's certification. See Disqualifying Incidents | Colorado Peace Officer Standards and Training for more information.

Covenants:

In consideration of the mutual covenants in this Agreement, it is understood and agreed by the Parties that:

1. The County will provide defense counsel through the Boulder County Attorney and his staff to represent Public Employee in this matter, including any future litigation, including any appeals.

2. The County shall not, under any circumstances, be obligated to pay for any legal services to the Public Employee in asserting or related to any individual counterclaim, cross-claim or any other claim against any of the Parties now or subsequently named in the Complaint or future litigation and no billings shall be rendered to the County for payment of any such services.

3. The Public Employee will cooperate fully with the Boulder County Attorney and his staff in any matter relating to this matter.

4. The Boulder County Attorney is providing representation to the Public Employee solely for the purpose of defending the employee in regard to the Complaint.

5. The Parties agree that, because of their common interests in the defense of this matter, all communication between them and the Boulder County Attorney for the purposes of seeking legal advice or in furtherance of the defense of this matter shall be privileged and confidential.

6. This Agreement may be terminated at any time by either Party upon written notice to the other Party.

[Signature Page to Follow]

Wherefore, the Parties have executed this Agreement.

COUNTY OF BOULDER
STATE OF COLORADO

ATTEST:

By: _____
Marta Loachamin, Chair
Board of County Commissioners

Date: _____

Clerk to the Board

Public Employee:

Donald Shepard

Don Shepard

Date: October 2, 2022

ADDENDUM TO LEGAL REPRESENTATION AGREEMENT

AGREEMENT TO CONSENT TO JOINT REPRESENTATION OF INDIVIDUAL CO-DEFENDANTS

This Agreement will confirm the retention of the Boulder County Attorney's Office (the "Attorney") as counsel to Don Shepard in the defense of claims alleged by Kyle Termin ("Mr. Termin") in the Complaint dated September 6, 2022 (the "Complaint"). This Agreement will also confirm your understanding of the potential benefits and risks inherent in joint representation, and your consent to the Attorney's joint representation of you and other individuals named in the Complaint as set forth below.

The Complaint names the following current or former employees of the Boulder County Sheriff's Office: Joe Pelle, Gene Taylor, Mario Moore, and Don Sheppard [*sic*]. Please note that the Attorney is not representing and cannot represent Mr. Taylor in this matter, and the Attorney's joint representation will include all of the above-listed individuals except for Mr. Taylor.

The Attorney represents the Board of County Commissioners (the "Board"). Subject to the limitations specified in the Colorado Governmental Immunity Act, the Board is required to offer you legal defense and indemnification against claims arising from acts committed by you, within the course and scope of your employment, so long as those acts were not willful and wanton. As provided in the Act, the Board has assigned the Attorney to represent you.

Based on the Attorney's review of Mr. Termin's allegations and a preliminary investigation of this matter, the Attorney does not perceive that any conflict exists between the interests of the Board, you, and the other individuals that the Attorney is assigned to represent in this matter; accordingly, the Attorney believes he can effectively represent the individuals and the Board in this matter. Nonetheless, because the possibility always exists that the interests of multiple individuals in a matter may diverge, the Attorney wishes to ensure at the outset that all individuals in this matter understand the implications of the proposed common representation, including its advantages and risks, and fully consent to the proposed joint representation.

The primary benefits derived from joint representation are the opportunities afforded for the cooperative investigation of Mr. Termin's claims, the development and presentation of a common defense and the reduction of defense costs incurred in this matter. Joint representation can be particularly beneficial where there are no material differences between individuals' view of the facts or the legal theories that support their respective defenses. Based on our investigation to date, the Attorney believes that your interests are generally aligned in this matter.

Conversely, you should understand that each individual may have potentially adverse positions or interests depending upon the facts as they are developed. While recognizing that individuals commonly have differing recollections or perceptions on matters of detail, such differing interests could give rise to real adversity if your recollection of events is fundamentally at odds on material issues; conflicts may also arise if your involvement in the matters at issue differed materially one from the other. If such a conflict develops, we will promptly inform all

affected clients; moreover, if your interests become irreconcilable, we might be obligated to withdraw as counsel and to cease our representation of any Party with respect to this matter.

In addition, you should understand that certain legal and factual defenses may be available to one or another of the individuals named in the Complaint, including you, and that the assertion of those defenses may enable one of the individuals to avoid any liability in this matter while leaving the other individual solely liable for any adverse judgment. The Attorney will be obligated to assert all such defenses, even if they may advance only one of the individuals' interests in this matter.

You should be aware that all information that you disclose to the Attorney or Attorney's staff or that the Attorney discovers in the course of its defense of this matter may be shared by the Attorney with the BOCC and the Boulder County individuals named in the Complaint except for Mr. Taylor. If you know of any information that you do not wish the Attorney to share with the other individuals, you should advise the Attorney of that fact, without disclosing the specific information, so that the Attorney can determine whether it is appropriate to continue the joint representation.

Finally, you should also be aware that you may have rights of indemnification or contribution against the other individuals named in the Complaint with respect to any loss sustained as a result of Mr. Termin's claims. You should understand that the Attorney will not advise any individual concerning, and will not otherwise pursue, any such claims that one individual might have against the other.

In light of these factors, if you wish to go forward with the proposed joint representation, the Attorney asks that you confirm your consent to the joint representation as set forth herein. The Attorney also asks that you acknowledge that the Attorney may at some point be required to withdraw from its representation of you in this matter and that the Attorney is authorized to do so after consultation with you. In such an event, the Attorney would assist you in obtaining substitute counsel, if so requested. In each case, your consent, upon which the Attorney will rely, is dependent upon the other individuals named in the Complaint and represented by the Attorney giving the Attorney their counterpart consent to the proposed joint representation with respect to this matter.

Please review this letter carefully. Should you have any questions or concerns about its contents, you are invited to call the Attorney or to consult with independent counsel to resolve those issues. If the terms of the joint representation in this matter, as set forth in this Agreement, are satisfactory, please acknowledge your consent by signing and returning this Agreement.

Your consideration with respect to this matter is appreciated.

Donald Shepard

Don Shepard

October 2, 2022

Date