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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed JUN - 3 2013 CLERK OF THE DISTRICT COURT ARAPAHOE COUNTY, COLORADO
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>JAMES HOLMES,</b> Defendant	
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: <a href="mailto:state.pubdef@coloradodefenders.us">state.pubdef@coloradodefenders.us</a>	σ COURT USE ONLY σ Case No. <b>12CR1522</b>  Division 26
<b>MOTION FOR SPECIFIC DISCOVERY – DISTRICT ATTORNEY GEORGE BRAUCHLER’S OPPOSITION TO THE CITY OF AURORA’S PROPOSED REVIEW OF THE EMERGENCY RESPONSE ON JULY 20, 2012 [D-048]</b>	

**CERTIFICATE OF CONFERRAL**

The District Attorney states that they object to the motion, and that they will file a response.

Mr. Holmes is charged with multiple counts of first degree murder and attempted murder in connection with the July 20, 2012, shooting at the Century 16 Theater in Aurora. The prosecution seeks to kill Mr. Holmes. Mr. Holmes, through counsel, seeks specific discovery of the following:

1. On May 4, 2013, the Denver Post reported:

*“In February, Arapahoe County District Attorney George Brauchler sent a letter to the Aurora city attorney, urging the council to scrap the outside probe until after the arraignment of alleged theater shooter James Holmes because it potentially caused problems with his prosecution.”*

2. On May 7, 2013, the Denver Post reported:

*“Despite objections by Arapahoe County District Attorney George Brauchler, the Aurora City Council approved an outside review of the city’s fire and police response during the July 20 theater massacre.”*

3. Quoted in the May 7<sup>th</sup> article, Aurora Police Chief Dan Oates noted that he had made his decision to go forward in the probe over Brauchler's objection after he had received a letter from Mr. Brauchler and had a follow up conversation with him concerning the issue.

4. Mr. Holmes, through counsel, moves this Court to order disclosure of any and all communications between the District Attorney's office and the City of Aurora and/or the Aurora Police Department concerning this issue, including but not limited to, the letter which was sent and the contents of any conversations and/or meetings.

5. Mr. Holmes makes this request pursuant to C.R.Crim. P. Rule 16.

6. Counsel requires this information in order to discharge their constitutional obligation to provide Mr. Holmes with the effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984); ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases 10.8, commentary p. 89, rev. ed. 2003 ("Because of the possibility that the client will be sentenced to death, counsel must be significantly more vigilant about litigating all potential issues at all levels in a capital case than in any other case.").

7. Moreover, the concept of fundamental fairness embedded in the Due Process Clause entitles a defendant to a general right of access to evidence. *See Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) ("[A] criminal trial is fundamentally unfair if the State proceeds against [a] ... defendant without making certain that he has access to the raw materials integral to the building of an effective defense.").

8. Given that the prosecution is seeking the death penalty against Mr. Holmes, he is entitled to and demands his right to heightened due process and heightened reliability throughout this proceeding. *Beck v. Alabama*, 447 U.S. 625, 637-638 (1980); *People v. Tenneson*, 788 P.2d 786, 804-05 (Colo. 1990); *People v. Rodriguez*, 786 P.2d 1079, 1082 (Colo. 1989) ("In a capital case, there is a strong presumption that possibly exculpatory evidence should be given to the defendant . . . . Although we have upheld the nondisclosure of the identity of confidential informants under the balance of interests test when they were not eyewitnesses . . . ., the nature of the death sentence requires an extraordinary showing, based on competent evidence, before nondisclosure can be permitted.").

9. In addition, Mr. Holmes is clearly entitled to this information pursuant to Colo. R. Crim. P. 16. Evidence is relevant for Rule 16 purposes as long as its contents are relevant to the conduct of the defense. *See e.g., People v. District Court El Paso County*, 790 P.2d. 337 (Colo. 1990); *People v. Gallegos*, 644 P.2d 920 (Colo. 1982). The Due Process Clause of the Fifth and Fourteenth Amendments are implicated when this discovery is not provided to the defense. *United States v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley*, 514 U.S. 419 (1995).

10. Finally, the prosecution has an overall ethical duty to provide discovery to the defense. *See In the Matter of Attorney C.*, 47 P.3d 1167 (Colo. 2002).

### **Request for a Hearing**

11. Mr. Holmes moves for a hearing on this motion.

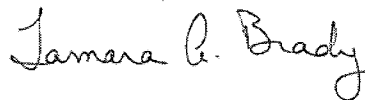
Mr. Holmes files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment,

pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.



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Daniel King (No. 26129)  
Chief Trial Deputy State Public Defender



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Tamara A. Brady (No. 20728)  
Chief Trial Deputy State Public Defender



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Kristen M. Nelson (No. 44247)  
Deputy State Public Defender

Dated: June 3, 2013

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	σ COURT USE ONLY σ
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff  v.  <b>JAMES HOLMES,</b> Defendant	
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: <a href="mailto:state.pubdef@coloradodefenders.us">state.pubdef@coloradodefenders.us</a>	Case No. <b>12CR1522</b>  Division 26
<p style="text-align: center;"><b>ORDER RE: MOTION FOR SPECIFIC DISCOVERY – DISTRICT ATTORNEY  GEORGE BRAUCHLER’S OPPOSITION TO THE CITY OF AURORA’S PROPOSED  REVIEW OF THE EMERGENCY RESPONSE ON JULY 20, 2012 [D-048]</b></p>	

Defendant’s motion is hereby GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
JUDGE

\_\_\_\_\_  
Dated

I hereby certify that on June 3, 2013, I

mailed, via the United States Mail,  
 faxed, or  
 hand-delivered

a true and correct copy of the above and foregoing document to:

George Brauchler  
Jacob Edson  
Rich Orman  
Karen Pearson  
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Centennial, Colorado 80111  
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