



MICHAEL B. HANCOCK
Mayor

DEPARTMENT OF LAW
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**REQUEST FOR PROPOSAL (RFP) –
FINANCE RELATED COUNSEL**

SCHEDULE OF EVENTS

• RFP Issued	July 17, 2019		
• Deadline to Submit Proposal	August 2, 2019	3:00 P.M.	Local Time
• Notification of Invitation to Interview	August 14, 2019		
• Interviews with Selection Committee	Week of August 19, 2019		
• Deadline to Submit Confirmation of Cleared Conflicts	August 26, 2019	3:00 P.M.	Local Time
• Notification of Selection of Qualified Pool	September 3, 2019		

FIRM SIGN HERE

Firm Name: _____

By: _____
(Printed or Typed Name)

(Signature)

Signature constitutes acceptance of all Terms and Conditions listed on this form and all documents attached.

**REQUEST FOR PROPOSAL (RFP) --
PUBLIC FINANCE COUNSEL AND BUSINESS DEVELOPMENT COUNSEL**

The Denver City Attorney is seeking the services of special counsel to assist the City and County of Denver (the “City”) in structuring and issuing of a variety of financial transactions and related matters and providing the City with general legal advice regarding business development related matters. The City hereby requests a Proposal that sets forth your firm’s qualifications to serve as special counsel for the following types of financial transactions and other matters:

- General Obligation Bonds;
- Revenue Bonds, other than Airport System Revenue Bonds;
- Single-Family Home Mortgage Revenue Bonds;
- Conduit financings, including Multi-Family Housing Mortgage Revenue Bonds, Industrial Development Bonds, bonds issued on behalf of non-profit 501(c)(3) entities, and related housing financial products, including but not limited to the Down-Payment Assistance Program;
- Certificated and Non-certificated Lease-purchase and other Asset Lease Financings;
- Non-Airport SWAP transactions and other Derivative Financings;
- Non-Airport Commercial Paper;
- On-going disclosure (both airport and non-airport financings) as related to requirements of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, and to assist in implementing and administering the City’s Executive Orders Nos. 90 and 114
- Non-Airport Public Private Partnerships;
- Airport Revenue Bonds;
- Airport SWAP transactions;
- Airport Special Facility Bonds;
- Airport Primary Disclosure;
- Airport Commercial Paper;
- Underwriter’s Counsel Pool; and
- Alternative financing mechanisms, including transactions utilizing tax credits (not otherwise described above) or other financial incentive tools sponsored by the federal government, and other innovative financing structures, including but not limited to, social impact bonds.

The City may engage more than one firm for each type of the above transactions. The City reserves the right to combine any of the above types of transactions to increase efficiency and/or reduce financing costs. Therefore, firms may submit a Proposal to act as counsel for any or all of the types of transactions listed above. The City reserves the right to exclude transactions related to financing the proposed redevelopment of the National Western Stock Show from any award of work pursuant to this RFP.

In addition, the City intends to develop a list of qualified firms to be given to underwriters on both Airport and Non-Airport transactions and recommend to the underwriters that firms from the “*Underwriter’s Counsel Pool*” be engaged by underwriters. Firms in the Underwriter’s Counsel Pool will be compensated at the rates set by the City Attorney in the Award of Engagement Letter consistent with this RFP.

Finally, the City may have a “*qualified pool*” of firms available to participate in certain types of financial transactions or other matters at the discretion of the City Attorney.

The term of the engagement period will be from the date of appointment through December 31, 2023, unless otherwise terminated or extended by the City Attorney.

Proposals are due by 3:00 p.m., Denver Time, Friday, August 2, 2019.

I. SCOPE OF SERVICES

Special Counsel will work under the direction of the City Attorney's Office and will work closely with the Department of Finance and other City departments. Services that may be performed by Special Counsel include the following responsibilities:

1. Render requisite opinion(s), including but not limited to opinion(s) regarding the validity and binding effect of the obligation, the source of payment and security for the obligation and the excludability of interest on the obligation from gross income for federal and state income tax purposes.
2. Prepare, review and/or negotiate, on behalf of and in the best interest of the City, all documents necessary or appropriate to the authorization, issuance, sale and delivery of obligations (which may include continuing disclosure undertakings); coordination of the authorization and execution of such documents; and review and, as appropriate, drafting of enabling legislation (which may include preparing election proceedings or pursuing validation proceedings).
3. Participate in meetings of the transaction's working group, including work on developing the structure of the transaction.
4. Assist in presentations to City Council, rating agencies and credit enhancement providers.
5. Assist in seeking any approvals, rulings, permissions, and exemptions necessary or appropriate in connection with any authorization, issuance, sale and delivery of obligations.
6. Provide on-going legal advice regarding: (i) existing and developing legislation, rules and regulations; (ii) court rulings and opinions; and (iii) industry practices or trends that could impact City transactions, including public private partnerships and alternative financing mechanisms.
7. Assist in the development, tracking and assessment methods related to private business use and other tax matters for financing transitions.
8. Perform all other requested legal services necessary and appropriate to representing the best interests of the City, both before and after the completion of any particular transaction. Such specified responsibilities may include providing services on:
 - ◆ Real estate, title, and insurance matters;
 - ◆ Private activity bond cap allocation matters, including ordinances, tax forms and state administrative matters;
 - ◆ Permitted investments;
 - ◆ Compliance with continuing disclosure undertakings;
 - ◆ Routine post closing questions and ongoing matters relating to financings and related matters, including private use, arbitrary matters, qualified management agreements and tax advice;
 - ◆ Non-routine post closing matters.

II. CAP ON HOURLY RATES AND TOTAL TRANSACTION FEES

The City intends to place a cap on hourly rates charged by selected firms based on the transaction. No increase in hourly fee rates or transaction maximums shall be allowed during the first year of the engagement. The City also intends to establish a flat fee for each transaction or issuance. After the first

year, the City Attorney may consider reasonable increases to the hourly rate cap and transaction maximums and any such request must be submitted to the City Attorney in writing for review and approval.

III. THE PROPOSAL

Firms wishing to provide legal services should respond to this RFP by submitting a written Proposal setting forth their qualifications by sequentially addressing the following:

1. Identify the type of transactions, including the Underwriter's Counsel Pool, for which the firm wishes to be considered. All firms, except those firms proposing to perform Non-Airport Public Private Partnership work, must be listed in the most recent edition of The Bond Buyer's Municipal Marketplace (the "Red Book").
2. Describe the firm's location and form of business organization, and list all partners and associates involved in public finance and tax matters. The successful firm must either be headquartered in Denver or have a regional office in Denver from which person(s) assigned to City matters shall work. Engagement of non-Denver firms are acceptable so long as person(s) assigned to City matters are located in Denver. Firms may jointly apply. Firms that do not have an office in Denver or do not have persons assigned to City matters located in Denver are not automatically disqualified from being considered. The City will take all factors into consideration in making its selections.
3. Describe the firm's relevant experience over the last three years for the types of transactions or legal work for which the firm is interested. Indicate whether the experience was as general, bond, underwriter, special, tax, or other counsel. For each example cited, give the name of the client, and the name, title and telephone number of an individual involved in the transaction as a reference. References should be exclusive of any City official or employee unless no other experience is applicable.
4. Identify the specific individual(s) who would provide legal services to the City and specify which individual would be the principal contact. Identify those individuals in senior positions on the team who are minorities or women. Note the geographic location(s) of team members. Identify the nature of the work each individual would perform, together with a brief description of the individual's relevant experience for the types of transactions for which the firm is interested, including experience in drafting legislation pertaining to public finance and knowledge of federal, state, and City laws and regulations as each may relate to City transactions. If awarded work pursuant to this RFP, please describe how the firm will allocate origination credit or deal credit among the team members. It is extremely important to the City that the attorneys who will be doing the actual, day-to-day work are included in your Response and in any subsequent interviews. Successful firms must notify the City Attorney and Manager of Finance prior to the reassignment of any of their key staff involved with the engagement.

Describe, in detail, your staffing and project management strategies to ensure quality of work, spending in accordance with the budget established for each transaction or engagement, and delivery of sustainable savings. If the firm's strategies vary by type or category of transaction, please describe the firm's strategy for each type or category of transaction.

5. For matters which are funded through a transaction, such as bond issuance, the City prefers a flat fee structure. Please specify a flat fee and expenses desired by the firm for each type of transaction for which the firm wishes to be considered. Please describe the extent to which such fees and costs are discounted for government clients. No increase in fees or costs shall be allowed during the first year's engagement. Any increase in hourly fees, transaction

maximums, or costs thereafter must be approved by the City Attorney. Please describe how any requests for fee increases would be calculated.

Please specify if there is a size or type of transaction or other factors (e.g. refunding, variable rate, derivatives) that would lead to a significant change in the stated maximum amount of fees and if so, set forth how the transaction fees or costs would change. Please detail whether the total flat fee includes routine continuing post-closing advice on such transaction, including on-going legal and tax advice and must include the charges for common transaction expenses. Non-routine post-closing matters may be billed at an hourly rate. For transaction based fees, fees and expenses will be billable only upon the successful closing of a transaction unless otherwise previously agreed to in writing by the City Attorney. For other services, such as annual disclosures, private use issues, public private partnerships and alternative financing matters, fees will be billed at an hourly rate and will be billable on a monthly basis, however, maximum fees will apply to be determined on a case by case basis, unless otherwise proposed.

6. Please complete the form entitled “Diversity and Inclusiveness in City Solicitations Information Request Form” and state whether you have a diversity and inclusiveness program for employment and retention, procurement and supply chain activities, or customer service, and provide the additional information requested on the form. This Form is available on line at: www.DENVERGOV.ORG; Office of Economic Development; Do Business with Denver; Exec Order 101 & Reports; Diversity and Inclusiveness in City Solicitations Information Request Form.

The information provided on the Diversity and Inclusiveness in City Solicitations Request Form will provide an opportunity for City contractors/consultants to describe their own diversity and inclusiveness practices. Contractors/Consultants are not expected to conduct intrusive examinations of their employees, managers, or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the contractor/consultant’s current practices, if any.

A completed and signed copy of the “Diversity and Inclusiveness in City Solicitations Request Form” must be included with your Proposal. Failure to include this form will render your Proposal non-responsive.

Please attach evidence, if applicable, that your firm is a recognized disadvantaged business enterprise under federal law.

Diversity and Inclusiveness information provided by City contractors/consultants in response to City solicitations for services or goods will be collated, analyzed, and made available in reports consistent with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from contractors/consultants will be in such reports.

As used herein, “Diversity” refers to the extent to which a contractor/consultant has people from diverse background or communities working in its organization at all levels, is committed to providing equal access to business opportunities and achieving diversity in procurement decisions for supplies, equipment, and services, or promotes training and technical assistance to diverse businesses and communities such as mentoring and outreach programs and business engagement opportunities. “Inclusiveness,” for purposes of Executive Order No. 101, includes the extent to which a contractor/consultant invites values, perspectives and contributions of people from diverse backgrounds and integrates diversity into its hiring and retention policies, training opportunities, and business development methods to provide an equal opportunity for

each person to participate, contribute and succeed within the organization's workplace. Inclusiveness also includes the extent to which businesses have an equal opportunity to compete for new business opportunities and establish new business relationships in the private and public sector.

7. Disclose any relationship and all compensation arrangements that your firm or any individual in your firm has or has had within the past 18 months that could create or appear to create a conflict of interest if your firm is selected. Include sufficient information about the potential conflict or the representation of a client in matters adverse to the City so that the City may determine if those conflicts are so significant as to warrant the Proposal to not be considered. Firms with conflicts on the date of delivery of the Proposal may certify to the City that such conflicts have been resolved no later than **3:00 p.m., Denver Time, Monday, August 26, 2019**. The firm shall also certify that if selected it will not take any engagement which could result in a conflict of interest without first receiving the informed consent, confirmed in writing, of the City Attorney.
8. Provide the form and amount of your firm's Malpractice Insurance coverage. The City requires Malpractice Insurance coverage in the amount of \$5,000,000.00 per claim and \$5,000,000.00 aggregate policy limit.

IV. SELECTION

The following criteria will be used to evaluate the Proposals submitted in the response to the RFP.

1. Experience and success in providing legal services related to the transaction or project types sought.
2. Demonstrated understanding of and ability to provide the services requested by the City.
3. Firm's commitment to diversity and inclusiveness principles and programs.
4. Meeting the conditions specified in this RFP.
5. Budget and cost of the proposed services to the City.

V. TERM OF ENGAGEMENT, CONTRACTS AND ENGAGEMENT LETTERS

The term of the awarded engagement period will be from the date of appointment through December 31, 2023, cancelable with or without cause by either party upon thirty days written notice to the other.

The City may decide to assign more than one firm to a particular type of transaction, assign firms to particular transaction within a category and divide responsibilities for a particular transaction between two or more firms. In such instances, it is expected the firms will combine their efforts, share the work and responsibilities in a manner agreeable to all parties and that at all times effectively serves the best interests of the City. Fees and expenses will be paid accordingly.

Engagement letters for individual transactions will be executed at the beginning of each transaction. The engagement letters will (a) reflect the fees and expenses set forth in the award from your Proposal unless otherwise approved by the City Attorney; (b) require the firm to certify that it will not take any engagement which could result in a potential conflict of interest without receiving prior informed consent, confirmed in writing, of the City Attorney; (c) state that transaction based fees and expenses are billable only upon the successful closing of the transaction unless otherwise agreed to in writing by the City

Attorney and that fees for advice regarding public private partnerships and alternative financing matters will be billed at an hourly rate and will be billable on a monthly basis; and (d) require execution of a Certification relating to compliance with Article 17.5 of title 8, (Colorado Revised Statutes (Employment of Illegal Aliens)). The standard form of individual transaction engagement letter currently used by the City is attached as Exhibit A hereto. By submitting a Proposal your firm confirms that the standard form is acceptable.

Any award of work as a result of this RFP not paid through the issuance of bonds or certificates of participation shall be contingent upon the execution of an appropriate contract. Exhibit B of this RFP contains the City's proposed terms and conditions. These terms and conditions shall form the basis of a contract covering the subject matter of this RFP. By submitting a Proposal your firm confirms that the standard form is acceptable. If there is contention(s) with the contract, a brief explanation and alternative language, if any, should be included in your Proposal. Any exceptions to the terms and conditions will be taken into consideration when evaluating Proposals submitted. The City reserves the right to reject any or all of your proposed modifications. Modifications to sections of the contract entitled: "Insurance," "Defense and Indemnification," "Colorado Governmental Immunity Act," "No Employment of Illegal Aliens to Perform Work Under the Agreement," "No Discrimination in Employment," and "Governing Law; Venue" will render your Proposal non-responsive.

VI. ADMINISTRATIVE ITEMS

Provide Proposals of 15 pages or less, plus exhibits and appendices of 10 pages or less, excluding the Diversity and Inclusiveness in City Solicitations Information Request Form. Every page of your Proposal, except the cover page and section title or divider pages, must be numbered. Include on the first page the name, title, address, telephone number and fax number of the firm's contact person for the RFP process. The City requests proposing firms use recycled-content paper products, preferably 30% post-consumer content or greater, duplex print on both sides of all proposal documents, do not spiral bind proposals, and submit a copy of documents electronically, on a flash drive.

The City complies with open record statutes and so proprietary information should be identified as such. Costs of responding to this RFP are solely the responsibility of the firm.

The City shall have the right at its sole discretion to waive any deficiency in any Proposal and to reject any or all Proposals. The issuance of this RFP in no way constitutes a commitment by the City to select any firm.

Finalists may be invited for an interview. Persons described in Section III(4) above and any other attorneys who will be assigned to perform legal services for the City must attend the interview. The City reserves the right to engage Special Counsel without interviews or further discussion of the Proposals.

By submitting a Proposal, the firm certifies that it has fully read and understands the RFP and has full knowledge of the scope, terms and conditions of services to be provided.

Ten (10) copies of your Proposal must be submitted by 3:00 p.m. prevailing Mountain Time, Friday, August 2, 2019 to:

Denver City Attorney's Office
City and County of Denver
201 W. Colfax Ave., Dept. 1207
Denver, CO 80202
Attn: Kwali M. Farbes

VII. ADDITIONAL INFORMATION

In connection with the services of Special Counsel solicited under this RFP, the firm, if selected to perform such services, certifies that the firm will not refuse to hire or discharge, promote or demote, or discriminate in matters of compensation against any employee or applicant for employment, who is otherwise qualified, because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. Further, it is the policy of the City to prohibit such discrimination in all employment practices and the City encourages all firms to take affirmative steps or implement programs to ensure that employment opportunities are made available and that employees are treated during employment without regard to their race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. Such steps may address, but should not be limited to, the following areas: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

For additional information about this RFP process, contact:

Kwali M. Farbes, Esq.
Assistant Section Director/Assistant City Attorney
201 W. Colfax Ave., Dept. 1207
Denver, Colorado 80202
(720) 913-8031
e-mail: kwali.farbes@denvergov.org

EXHIBIT A

FORM OF INDIVIDUAL TRANSACTION ENGAGEMENT LETTER

[TO BE TAILORED FOR EACH TRANSACTION]

1. TRANSACTION

[Name of Firm] as counsel (“Special Counsel”) will provide legal services to the City in connection with [Insert transaction]. *[The City Attorney’s Office will send a description of the transaction with any assumptions about the transaction that impacts the scope of work].* We understand that this Engagement Letter must be executed by both parties prior to performing any billable work and before the City is obligated for the payment of any fees or expenses under this transaction.

2. SCOPE OF WORK

[The City Attorney’s Office will send to and Special Counsel will attach the agreed upon scope of work, tailored to the particular transaction, prior to Special Counsel doing any work on the transaction.]

[Sample scope of work for typical Bond transaction.] As your Special Counsel, we have already or will: Examine applicable law; consult with the parties to the transaction prior to the issuance of the Bonds; participate in meetings with City officials relating to the structuring of the bonds; participate in meetings relating to permissible levels of private use of the Bond financed facilities; prepare customary authorizing and operative documents (which may include proceedings relating to: an election on the Bonds, canvassing the returns of the election, the authorization of the sale and issuance of the Bonds, and closing certificates); review a certified transcript of proceedings; and undertake such additional duties as we deem necessary to render the opinion. Subject to the completion of proceedings to our satisfaction, we will render our Bond opinion relating to the validity of the Bonds, the enforceability of the security for the Bonds, and the exclusion of the interest paid on the Bonds (subject to certain limitations which may be expressed in the opinion) from gross income for federal income tax purposes and for Colorado income tax purposes.

We are also being retained by you to act as Special Counsel to the City in connection with the Official Statement for the Bonds (the “Official Statement”). As such, we will provide advice to the City on the applicable legal standards to be used in preparing the Official Statement and meeting the City’s disclosure responsibilities. At the conclusion of the transaction we will deliver a letter to you stating that we have assisted the City in the preparation of the Official Statement, and that in the course of such assistance, nothing has come to the attention of the attorneys in our firm rendering legal services in connection with our representation which leads us to believe that the Official Statement, as of its date (except for the financial statements, other statistical data and statements of trends and forecasts, and information concerning The Depository Trust Company (“DTC”) provided by DTC contained in the Official Statement and its Appendices, as to which we express no view), contains any untrue statement of material fact or omits to state any material fact necessary to make the statements in the Official Statement, in light of the circumstances under which they were made, not misleading.

In rendering our opinion and letter, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation. Our opinion and letter each will be addressed to the City and will be executed and delivered by us in written form on the date the Bonds are exchanged for their purchase price (the “Closing”). The opinion letter each will be based on facts and law existing as of their date.

This Scope of Work will include, without limitation, negotiating, drafting and coordinating the adoption of all necessary City Council ordinances, negotiating and/or drafting escrow agreements, bond purchase agreements, insurance policies and other required instruments, coordinating bond redemption notices, participating as Bond Counsel in connection with the preparation and review of offering documents, preparing necessary Closing certificates and documents (including required Tax Certificates), supervising the Closing itself and rendering any required legal opinions. *[End of sample scope of work.]*

Unless otherwise approved by the City Attorney's Office, the firm understands that they will not be paid for: (i) time spent in conferences among members of the firm; (ii) more than one attorney's time to attend meetings or conference calls regardless of the number of attorneys attending the meeting or call; (iii) time spent on legal research not pre-approved by the City; (iv) time spent preparing the Engagement Letter; or (v) or time spent on the initial consultation concerning the transaction.

3. PERSONNEL

[Name of lead attorney] will be principally responsible for the work performed by [Name of Firm] on your behalf. Where appropriate, certain tasks may be performed by other attorneys or paralegals, including [Add names]. At all times, however, the above named attorney will coordinate, review and approve all work completed for the City. No other attorneys shall perform work for the City without the prior written consent of the City Attorney's Office.

4. FEE ARRANGEMENT

[The City Attorney's Office will send the transaction fee amount for each Firm based on the amounts set forth in the 2019 Award letter and the Scope of Work. The amount will be included here.] Based upon: (i) our current understanding of the terms, structure, size and schedule of the transaction as set forth in the above Scope of Work; (ii) the responsibilities we will undertake pursuant to the above Scope of Work; (iii) the time we anticipate devoting to the above Scope of Work; (iv) the skill and experience required to complete the above Scope of Work properly; and (vi) the responsibilities we will assume, the fees and expenses for [Name of Firm] shall be [\$ _____]. Such fees will not result in total fees and expenses exceeding the fee authorized in our 2019 Award Letter. We understand that no travel time or expenses will be billed.

If there is any material change in the Scope of Work, the firm shall immediately bring such change to the attention of the assigned Assistant City Attorney.

We understand and agree that payment of any fees and expenses is contingent upon closing the transaction and if closing occurs, our fees will be paid at Closing out of Bond proceeds. If the financing is not consummated, we understand and agree that we will not be paid.

5. REPRESENTATION OF THE CITY

In performing our services, the City will be our client and an attorney-client relationship will exist between us. We will represent the interests of the City rather than the City Council, its individual members, or the City's employees. We will work closely with the City Attorney's Office and will rely on its opinion with regard to specific matters, including pending litigation. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. Our limited representation of the City shall not alter our responsibility to render an objective opinion as Special Counsel.

6. CONFLICT OF INTEREST AND CONFIDENTIAL INFORMATION

To prevent any future misunderstanding and to preserve the firm's ability to represent the City and its other clients, the firm confirms the following understanding about certain conflicts of interest issues:

a) The firm acknowledges the City's policy concerning conflicts of interest and will inform and seek consent of the City Attorney before it represents another client in any matter directly adverse to the City. The firm understands the term "matter" to refer to transactions, negotiations, proceedings or other representations involving specific parties.

b) Under applicable Rules of Professional Conduct, the firm is obligated to and shall preserve the confidentiality of any confidential information the City provides to it. In this connection, the firm may obtain nonpublic information about the City in course of its representation. The firm restricts access to the City's nonpublic information to firm personnel who need to know that information in connection with our representation and, as appropriate, third parties assisting in that representation. The firm maintains appropriate physical, electronic, and

procedural safeguards to protect the City's nonpublic information. The firm shall not disclose nonpublic information about its clients or former clients to anyone, except as permitted by law and applicable Rules of Professional Conduct.

c) The firm will not disclose to the City or use on the City's behalf any documents or information with respect to which it owes a duty of confidentiality to another client or person.

d) The fact that the firm may have the City's documents and/or information, that may be relevant to another matter in which it is representing another client, will not prevent it from representing that other client in that matter without any further consent from the City. In such a case, however, the firm will put in place screening or other arrangements to ensure that the confidentiality of the City's documents and/or information is maintained.

e) Our professional obligations require the firm to perform a conflicts check and not to commence work on a matter if it finds conflicts of interest that would preclude us from doing so. Our professional obligations to the City and to our other clients will require each firm to run a new conflicts check if there is any change in the parties to the matter or any material change in its nature. Each firm must also run a new conflicts check before undertaking any new matters for the City.

7. DISCLOSURE ISSUES

a) Lobbying Disclosure Act of 1995

Please note that, under certain circumstances, lawyers who lobby officials of the executive or legislative branches of federal agencies must publicly disclose such activities under the Lobbying Disclosure Act of 1995, as amended by the Honest Leadership and Open Government Act of 2007 and, as may be further amended from time to time. If the activities of either firm on behalf of the City trigger the Act's registration and reporting requirements, such firm will have to file reports, which will be made available to the public, disclosing its representation of the City, the general nature of its "lobbying" activities on the City's behalf, and its income from such activities.

b) Tax Shelter Regulations

Internal Revenue Service ("IRS") regulations require certain "material advisors" who make "tax statements" in the course of their work to maintain lists containing specified information and to disclose such information to the IRS upon request. The lists generally identify participants in a transaction, describe their anticipated tax benefits, and must include certain supporting documentation. Although targeted at "potentially abusive tax shelters," these regulations encompass "any transaction that has the potential for tax avoidance or evasion." Many of the commercial and other matters that either firm handles involve incidental tax issues that may bring them within this definition, even if such firm is not acting as its client's tax adviser with respect to the matter. If our activities on the City's behalf trigger these record keeping or disclosure obligations in respect of either firm, such firm will be required to comply with the applicable law.

c) Compliance with Audit Requests, Subpoenas, Legal Process and Other Requests or Demands for Information

From time to time either firm may be required to respond to other requests for information or documents about the City or our work for the City. Such requests may come from the City or the City's auditors. They may also come from third parties through a subpoena or other legal process to which we are required to respond.

d) Municipal Advisor Regulations

Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 15B of the Securities Exchange Act of 1934 ("Exchange Act") to add a new requirement that "municipal advisors" register with the Securities and Exchange Commission ("Commission" or "SEC"), effective October 1, 2010. On September 20, 2013, the Commission adopted final rules for municipal advisor registration ("Final Rules"). Final Rules interpret the statutory definition of the term "municipal advisor." Exchange Act Section 15B(e)(4)(C) excludes from the municipal advisor definition attorneys offering legal advice or providing services that are of a traditional legal nature with respect to the issuance of municipal securities or municipal financial products. The Final Rules limit the scope of the attorney exclusion to such advice or services the attorney provides to the attorney's client that is a municipal entity, obligated person, or other participant in the transaction. In the Final Rules and the adopting release accompanying the Final Rules the Commission limited the scope of these exclusions and exemptions to certain identified activities as opposed to focusing on the status of the particular market participants. The Final Rules were

effective on July 1, 2014. Municipal advisors must comply with the requirement to register, maintain registration eligibility and to maintain documentation as municipal advisors using the final registration forms under the Final Rules. Disclosure may be required in certain circumstances and if activities on the City's behalf, by the firm or third parties, trigger these record keeping or disclosure obligations in respect of either firm, such firm will be required to comply with the applicable law.

8. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

- a) This Engagement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").
- b) Special Counsel certifies that:
 - (i) At the time of its execution of this Engagement, it does not knowingly employ or contract with an illegal alien who will perform work under this Engagement.
 - (ii) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Engagement.
- c) Special Counsel also agrees and represents that:
 - (i) It shall not knowingly employ or contract with an illegal alien to perform work under the Engagement.
 - (ii) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to Special Counsel that it shall not knowingly employ or contract with an illegal alien to perform work under the Engagement.
 - (iii) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Engagement, through participation in the E-Verify Program.
 - (iv) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Engagement, and that otherwise requires Special Counsel to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
 - (v) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under this Engagement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. Each Special Counsel will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.
 - (vi) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.
- d) Special Counsel is liable for any violations as provided in the Certification Ordinance. If Special Counsel violates any provision of this section or the Certification Ordinance, the City may terminate this Engagement. If the Engagement is so terminated, Special Counsel shall be liable for actual and consequential damages to the City. Any such termination of this Engagement due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Special Counsel from submitting bids or proposals for future contracts with the City.

9. DOCUMENT RETENTION

At or within a reasonable period after Closing, we will review the file to determine what materials should be retained as a record of our representation and those that are no longer needed. We will provide you with a copy of the customary transcript of documents after Closing and will return any original documents obtained from you (if a copy is not included in the transcript). We will retain for several years a copy of the transcript and such other materials as correspondence, final substantive work product, documents obtained from you, and documents obtained from third

parties. We will not retain such materials as duplicates of the above-described material, or drafts and notes that do not appear needed any longer.

Ordinarily our firm will keep the retained materials until seven years after the final maturity of the Bonds. At the end of that time, unless you advise us in writing to the contrary, we will destroy the bulk of the file. If the file is especially voluminous, we may destroy all or portions of it earlier, as our storage facilities are limited. If you prefer other arrangements for retention or disposition of our files in this matter, please advise us in writing.

10. APPLICATION OF TERMS

Our representation in respect of this matter will be deemed concluded at the time that we have rendered our final bill for services to the City on this matter.

Many post-closing events may affect the Bonds, the tax-exempt status of interest on the Bonds, or liabilities of the parties to the transaction. Such subsequent events might include a change in the project to be financed with Bond proceeds, a failure by one of the parties to comply with its contractual obligations (*e.g.*, rebate requirements, continuing disclosure requirements), an IRS audit, or a change in federal or state law. Should the City seek advice on a routine post-closing matter our firm will be responsive to all inquires. If the City seeks additional legal services for non-routine post-closing matters, we would be happy to discuss the nature and extent of that separate engagement at that time.

11. APPROVAL

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning the enclosed copy of this letter, retaining the original for your files.

If you disagree with any of these terms and conditions, please advise us immediately by return correspondence so that we can resolve any differences at the outset of this engagement and proceed with a clear, complete, and consistent understanding of our relationship.

[Special Counsel]

By: _____

Accepted and Approved:
City Attorney for the
City and County of Denver

EXHIBIT B
FORM OF PROFESSIONAL SERVICES AGREEMENT

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and _____, a _____, whose address is _____ (“Special Counsel”), collectively “the Parties.”

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

1. COORDINATION WITH DEPARTMENT OF LAW: To provide the best possible legal representation and reduce costs and expenses, Special Counsel agrees whenever possible to utilize the staff of the City Attorney’s Office, together with other City personnel. As directed by the City Attorney, Special Counsel agrees to utilize and coordinate with any consultant retained by the City on matters related to Special Counsel’s work. Special Counsel acknowledges that one or more Assistant City Attorneys will be assigned to provide additional legal representation to the City on certain matters. Special Counsel shall submit to the City for approval: budgets, work plans and case plans in such form as may be required by the City’s Department of Law.

2. PROFESSIONAL SERVICES TO BE PERFORMED: Special Counsel shall provide professional legal services, as provided by Subtitle B of the Denver City Charter at section 6.1.2 and in conformance with the Colorado Rules of Professional Conduct for [SCOPE OF REPRESENTATION]. _____, Esq. shall serve as lead attorney for Special Counsel and shall direct the provision of services under this Agreement. Special Counsel shall supply the City with a copy of all pleadings, motions, briefs, interrogatories, requests for admissions, requests for production of documents, memoranda, orders and judgments of the court or arbitrator, contracts, agreements, memoranda, or other documents prepared by Special Counsel or any subcontractor hired by Special Counsel under this Agreement. Special Counsel agrees that the City Attorney, or the City Attorney’s designated representative, shall have final authority over the use of all documents to be prepared in the above matters.

3. TERM: The Agreement will commence on January 1, 2020, and will expire on December 31, 2023 (“Term”).

4. PAYMENT OF FEES AND EXPENSES: The City shall pay to Special Counsel, and Special Counsel agrees to accept as full payment of fees **not to exceed** _____ **AND ZERO CENTS (\$_____.00)**, which shall be paid from time to time on the basis of monthly statements rendered by Special Counsel to the City as follows:

a. Fee Schedule: Special Counsel shall be paid for actual time devoted to the work for the City, including meetings with City officials, review, preparation for and appearance on behalf of the City in any grievance/arbitration hearings and/or litigation, conferences and telephone conferences, and all necessary travel time at the following rates: for professional services provided by _____, Esq., and other partners employed by the Special Counsel providing services under this Agreement, at the rate of _____ Dollars (\$_____.00) per hour of work actually performed; and for professional services provided by associate attorneys employed by the Special Counsel providing services under this Agreement, at the rate of _____ Dollars (\$_____.00) per hour of work actually performed; and for overtime of

administrative and professional staff services provided by employees of the Special Counsel, at the rate of _____ Dollars (\$____.00) per hour of overtime work actually performed. Any use of, or billing for, the services of other employees of Special Counsel shall require the approval of the City Attorney in advance.

b. Expenses and Costs: In addition, reimbursement of expenses shall be paid on the basis of monthly statements rendered by Special Counsel to the City, as follows:

In-House Copying	\$.20 per page
Long Distance Telephone	At cost
Computerized Legal Research	At cost
Postage, special delivery	At cost
Delivery Services	At cost
Service and filing fees	At cost
Court Reporters	At cost

Upon the prior approval of the City Attorney, the actual costs incurred by Special Counsel for documents sent to a printer or other outside contractor for reproduction, enlargement, reduction, display or mounting will be reimbursable. Other costs, including office personnel and overhead are not reimbursable and are presumed to be included in the hourly rates. Questions regarding the eligibility of an expense must be resolved in writing by the City prior to Special Counsel incurring the expense. Special Counsel shall be reimbursed at cost for travel expenses incurred by its attorneys and paralegals subject to the following limitations: All reimbursable travel shall have prior written approval by the City Attorney, and be related to and in furtherance of the purposes of Special Counsel’s engagement. Vehicle rental costs are allowed when efficiency and economy are served, taking into consideration the elements of time and distance. Use of such vehicle for personal travel shall not be reimbursed. Reimbursement for meals is limited to the per diem allowed under the City’s fiscal rules. Sleeping accommodation costs are limited to a reasonable amount, taking into account costs of alternate facilities in the location and other relevant factors. Non-business and strictly personal expenses shall not be reimbursed, and hourly rates will not be paid for any period of time a trip is extended for convenience. Additional attorneys and paralegals employed by Special Counsel providing services under this Agreement may be billed at hourly rates pre-approved by the City.

c. Maximum Contract Amount:

(i) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation _____ **DOLLARS AND ZERO CENTS (\$_____ .00)** (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Special Counsel beyond that specifically stated herein. Any services performed beyond those set forth in this Agreement are performed at Special Counsel’s risk and without authorization under the Agreement.

(ii) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance

in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. STATEMENT OF SERVICES RENDERED: The Special Counsel shall submit to the City a monthly invoice describing all services rendered and costs incurred by Special Counsel under this Agreement for the period covered by said invoice in such format as designated by the City Attorney or his designated representative. Each such invoice shall contain at least the following information: the date and nature of the services rendered, the name and position of the provider of such service, the amount of time, in hours and tenths or fractions of hours, attributable to each such service, and the total number of hours billed to the City for the period covered by the invoice. All invoices shall reference the Contract Control number of this Agreement as designated below on the City's signature page (the "Contract Control Number"). The City reserves the right to require such additional documentation as it deems appropriate to support the monthly invoice of Special Counsel. Any questions regarding the eligibility of an expense must be resolved in writing by the City prior to the incurrence of such expense by Special Counsel. A partner of the Special Counsel shall verify the monthly invoice.

Invoices are confidential attorney-client privileged documents and shall remain as such until and unless otherwise directed by the City Attorney. The City shall use its best efforts to pay invoices within thirty (30) days of receipt.

The Special Counsel shall attach to all invoices and billings provided hereunder a completed copy of the Invoice Review document, a blank copy of which is attached as **Appendix 1 to Exhibit B** and incorporated by reference. The City reserves the right to require such additional documentation as it deems appropriate to support the monthly invoice of Special Counsel.

6. STATUS OF SPECIAL COUNSEL: The status of the Special Counsel under this Agreement shall be that of licensed attorneys at law, providing professional legal services to the City under this Agreement, and neither Special Counsel nor its agents or personnel shall be considered employees of the City for any purpose whatsoever.

7. TERMINATION: The City may terminate this Agreement at any time, with or without cause. Termination shall be subject to Court consent, if such consent is required. If the Special Counsel's services are terminated, it shall be paid only for that portion of services satisfactorily completed in accordance with this Agreement at the time of notice of such action.

8. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Special Counsel, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

9. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Special Counsel. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

10. INSURANCE:

a. **General Conditions:** Special Counsel agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Special Counsel shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the Contract Control Number. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Special Counsel shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s Contract Control Number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Special Counsel. Special Counsel shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Special Counsel. The Special Counsel shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. **Proof of Insurance – Workers’ Compensation, Commercial General Liability, and Professional Liability:** Special Counsel shall provide a copy of this Agreement to its insurance agent or broker. Special Counsel may not commence services or work relating to the Agreement prior to placement of coverage. Special Counsel certifies that the certificate of insurance attached as **Exhibit A**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement with the exception of the Personal Automobile insurance requirement. Acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Special Counsel’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds:** For Commercial General Liability and Professional Liability, Special Counsel and subcontractor’s insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all coverages, with the exception of Professional Liability – if required, Special Counsel’s insurer shall waive subrogation rights against the City.

e. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Special Counsel. Special Counsel shall include all such subcontractors as additional insured under its policies (with the exception of Workers’ Compensation) or shall ensure that all such subcontractors and subconsultants maintain the

required coverages. Special Counsel agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

f. Workers' Compensation/Employer's Liability Insurance: Special Counsel shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Special Counsel expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Special Counsel's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Special Counsel executes this Agreement.

g. Commercial General Liability: Special Counsel shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

h. Business Automobile Liability: Special Counsel shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

i. Professional Liability: Special Counsel shall maintain professional liability limits of \$5,000,000.00 per claim and \$5,000,000.00 aggregate policy limit.

j. Additional Provisions:

(i) For Commercial General Liability, the policies must provide the following:

- A. That this Agreement is an Insured Contract under the policy;
- B. Defense costs are in excess of policy limits;
- C. A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- D. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(ii) For claims-made coverage:

- A. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- B. Special Counsel shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits.

(iii) At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Special Counsel will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

11. DEFENSE AND INDEMNIFICATION:

a. Special Counsel agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims shall have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Special Counsel or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Special Counsel’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Special Counsel’s duty to defend and indemnify City shall arise even if City is the only party sued by Claimant and/or Claimant alleges that City’s negligence or willful misconduct was the sole cause of Claimant’s damages.

c. Special Counsel will defend any and all Claims brought or threatened against City, and will pay on behalf of City, any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Special Counsel under the terms of this indemnification obligation. The Special Counsel shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

12. COLORADO GOVERNMENTAL IMMUNITY ACT: In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

13. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City’s prompt payment ordinance § 20-107, *et seq.*, of the Denver Revised Municipal Code (D.R.M.C.). The Special Counsel shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

14. ASSIGNMENT; SUBCONTRACTING: Except as specifically authorized hereunder, the Special Counsel shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the City Attorney’s prior written consent. Except as specifically authorized hereunder, any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The City Attorney has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement on account of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Special Counsel shall remain

responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

15. INUREMENT: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns, provided assignments are consented to in accordance with the terms of the Agreement.

16. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Special Counsel receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

17. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Special Counsel lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

18. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

19. CONFLICT OF INTEREST:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. Special Counsel shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. Special Counsel acknowledges that it and its attorneys are bound by the Colorado Rules of Professional Conduct applicable to Colorado attorneys, including without limitation Rule 1.7, which addresses a lawyer's engagement under circumstances involving a conflict of interest. Special Counsel shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Special Counsel represents that it has disclosed any and all current or potential conflicts of interest, which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Special Counsel by placing the Special Counsel's own interests, or the interests of any party with whom the Special Counsel has a professional relationship or contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Special Counsel written notice describing the conflict.

20. NOTICES: Notices concerning termination of the Agreement, alleged or actual violations of the terms of the Agreement, and matters of similar importance must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Special Counsel at the address first above written, and if to the City at:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

21. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

a. This Agreement is subject to D.R.M.C. Division 5 of Article IV of Chapter 20, and any amendments (the “Certification Ordinance”).

b. The Special Counsel certifies that:

(i) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(ii) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Special Counsel also agrees and represents that:

(i) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(ii) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Special Counsel that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(iii) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(iv) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Special Counsel to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(v) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Special Counsel will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. § 20-90.3.

d. The Special Counsel is liable for any violations as provided in the Certification Ordinance. If Special Counsel violates any provision of this section or the Certification Ordinance, the City may terminate this

Agreement for a breach of the Agreement. If the Agreement is so terminated, the Special Counsel shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Special Counsel from submitting bids or proposals for future contracts with the City.

22. DISPUTES: All disputes between the City and Special Counsel arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et seq.* For the purposes of that administrative procedure, the City official rendering a final determination shall be the City Attorney.

23. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Denver Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

24. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the Special Counsel may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Special Counsel shall insert the foregoing provision in all subcontracts.

25. COMPLIANCE WITH ALL LAWS: Special Counsel shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

26. LEGAL AUTHORITY: Special Counsel represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Special Counsel represents and warrants that he has been fully authorized by Special Counsel to execute the Agreement on behalf of Special Counsel and to validly and legally bind Special Counsel to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Special Counsel or the person signing the Agreement to enter into the Agreement.

27. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

28. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

29. INTELLECTUAL PROPERTY RIGHTS: The City and Special Counsel intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures,

advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Special Counsel and any subcontractor hereunder and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Special Counsel shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Special Counsel and any subcontractor hereunder (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

30. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Special Counsel’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

31. ADVERTISING AND PUBLIC DISCLOSURE: Special Counsel shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Special Counsel’s advertising or public relations materials without first obtaining the written approval of the City Attorney. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Special Counsel shall notify the City Attorney in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

32. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Special Counsel consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

33. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

34. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the parties. No oral representation

by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments will be, binding upon the parties and their successors and assigns.

35. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Special Counsel shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs.

[Signatures appear on the following pages.]

ATTACHMENTS:

EXHIBIT A CERTIFICATE OF INSURANCE

EXHIBIT B SPECIAL COUNSEL BILLING REQUIREMENTS

EXHIBIT A
Certificate of Insurance

EXHIBIT B
SPECIAL COUNSEL BILLING REQUIREMENTS

These Special Counsel Billing Requirements (“**Requirements**”) set forth the procedures that govern the relationship between the CITY AND COUNTY OF DENVER (“**Denver**” or the “**City**”) and its outside legal counsel (“**Special Counsel**”) with respect to billing procedures and related activities under the Special Counsel Agreement (“**Agreement**”).

The City expects Special Counsel and any associated professionals working on City matters to comply with these Requirements. These Requirements supersede any previously provided Requirements.

1. Introduction

These Requirements apply to all Special Counsel retained by the City to provide legal services in connection with litigation or transactional matters. Special Counsel shall become familiar with and adhere to these Requirements in providing legal services.

The City expects Special Counsel to provide high-quality legal services at reasonable cost, to maintain transparency in billing, and to be mindful of the responsibility to conserve public resources without compromising the quality of the services provided.

2. Supervising Attorney and Budget Submission

For all matters referred to Special Counsel, the City Attorney’s designee (“**Supervising Attorney**”) will supervise and work with Special Counsel. The Supervising Attorney will be directly responsible to the City Attorney for all of Special Counsel’s activities, billings, and payments.

Special Counsel shall contact the Supervising Attorney for any approvals required by these Requirements. Special Counsel should consult frequently with the Supervising Attorney regarding matters Special Counsel is handling so that the City will have current information about the status of all matters and can provide input on case strategy and expenditures. As appropriate, Special Counsel will schedule periodic meetings and conference calls with the Supervising Attorney to discuss developments and strategy.

Special Counsel shall provide the Supervising Attorney with a budget upon request. A separate budget should be submitted for each matter. The budget shall include a good faith estimate of the cost of the services, including an identification of each of the various tasks Special Counsel expects to perform, the projected number of hours of attorney time and paralegal time needed to complete each task per each timekeeper, and the fees and costs anticipated to be associated with each task. If, during the course of the representation, it appears that Special Counsel may exceed a proposed budget by 10% or more, Special Counsel shall notify the Supervising Attorney, provide a written explanation for the anticipated variance from the budget, obtain the approval of the Supervising Attorney for any such variance, and submit an updated budget to the Supervising Attorney. At a minimum, Special Counsel should update the budget for each case on a quarterly basis and shall provide a revised budget to the Supervising Attorney on the following schedule: January 2, April 1, July 1, and October 1.

Special Counsel shall abide by the budget approved by the Supervising Attorney for each of the matters it is assigned. In no circumstance shall Special Counsel exceed the Maximum Contract Amount, as defined in the

Agreement. The Supervising Attorney is not authorized to approve budgets that individually, or in aggregate, exceed the Maximum Contract Amount, as defined in the Agreement.

All bills submitted by Special Counsel will be reviewed by and are subject to the approval of the Supervising Attorney.

3. Staffing Philosophy

- a.** Special Counsel's lead attorney, as designated in Section 1 of the Agreement, and the Supervising Attorney shall agree upon a primary attorney for Special Counsel, which may be the lead attorney designated in Section 1 of the Agreement, for all assigned matters (the "**Primary Attorney**"). The Primary Attorney shall oversee any matter being handled for the City, including the billing and payments. Special Counsel may not substitute a different Primary Attorney without the Supervising Attorney's prior approval in writing.
- b.** Special Counsel shall submit a staffing profile that identifies the partners, associates, paralegals, and other staff who will bill time to each matter. Special Counsel shall minimize staffing changes. Changes and additions to staff are subject to the prior approval of the Supervising Attorney. The City reserves the right to request, and to object to, representation by specific attorneys within Special Counsel's firm. Overstaffing and staffing with overqualified or underqualified personnel assigned to City matters are not permitted and may result in a reduction of Special Counsel's fees.
- c.** Special Counsel shall select, for each task, an individual suitable for the task and the specific needs of the matter. Each such individual must have appropriate experience in the area in which he or she is performing services and hold all necessary licenses and admissions.
- d.** Special Counsel shall not:
 - (i) Assign unnecessary or duplicative staff to matters.
 - (ii) Charge for any services that duplicate the effort of other assigned staff.
 - (iii) Charge for time of newly assigned attorneys, after a change in personnel, spent to become familiar with the matter, or time spent duplicating work performed by an attorney previously assigned to the matter.
- e.** The selection and retention of appraisers, consultants, investigators, and other third-party professionals shall be coordinated with and approved by the Supervising Attorney in written form. Special Counsel shall provide information regarding the consultant's or expert's area of expertise, description of the services to be provided, hourly rates, and estimates for the services to be provided. Special Counsel shall itemize charges for any such services on its invoices.

4. Billing

- a.** Special Counsel shall submit invoices for legal fees and costs on a monthly basis no later than the 15th of each month. All invoices should be submitted Outside Counsel/Professional Services Invoice Review, attached as **Appendix 1**, and the Invoice Cover Sheet, attached as **Appendix 2**. Invoices shall include all fees for legal services performed from the prior month. The City reserves the right not to pay for any time entries billed in an untimely manner.

- b.* Special Counsel shall send a separate invoice for each matter.
- c.* Special Counsel shall submit supporting documentation for all allowed reimbursable expenses over \$100.
- d.* Unless Special Counsel is otherwise instructed by the City, Special Counsel's invoices shall be addressed and submitted to: the Supervising Attorney and to CAOAdminbilling@denvergov.org.

5. Charges for Services

- a. Time Charges.* All charges for Special Counsel's legal services should be recorded daily in 0.1 hour increments based upon actual time spent. Time billed in excess of 0.1 hour should be billed by rounding up or down to the nearest higher or lower increment. The overall time billed should not exceed the actual time spent. Any tasks performed but not charged should be billed through a zero hour entry.
- b. Single Entry Timekeeping/Block Billing.* Each task should be billed in a separate line entry. Grouping multiple activities under a single time charge (block billing) is not allowed. Each item of work shall be associated with a discrete charge.
- c. Description of Services.* Each time entry shall include a clear description of the services rendered, including the nature of the task, the purpose and the subject of the task performed, the individual who performed the task, and the amount of time that was spent on a task. The City reserves the right to seek clarification from Special Counsel where it finds an invoice to be vague or unclear and may reduce the amount of time billed for a specific task at its own discretion.
- d. Intra-Office Conferences.* Intra-office conferences may be billed when such conferences are held to discuss strategy and legal issues and result in more efficient legal representation for the City. Special Counsel shall ensure that intra-office conferences are kept to a minimum, that time billed for intra-office conferences accurately reflects time spent on the matter, and that only mandatory staff bill time for such conferences. Charges for intra-office conferences shall describe the reason for the conference and the subject matter of the discussion.
- e. Multiple Attendance.* The City will pay for only one attorney to attend meetings and closings, unless otherwise approved in advance and in writing by the Supervising Attorney.
- f. Legal Research.* The City will only pay for legal research reasonably necessary to complete an assignment. Special Counsel shall consult within its own firm and with the Supervising Attorney prior to conducting extensive legal research to determine whether similar issues have been previously researched by the firm or by the City, particularly with respect to issues that are frequently addressed by the City. Special Counsel is required to use prior research when possible, and in such situations, may charge the City only for updating prior research. Special Counsel shall not initiate research before it is needed unless the Supervising Attorney expressly approves the research in advance.
- g. Reviewing Files.* The City will not pay for the review of a file by an attorney who is merely supervising the work of another employee of the firm. Similarly, Special Counsel shall not bill the City for file review if an event does not precipitate such review (such as a telephone call or receipt of correspondence) or if

the file review does not result in the creation of any tangible work product. Any invoice that includes a time entry for “file review” shall include the purpose of the review or that item will not be considered for payment by the City.

- h. Non-Compensable Fees.* Activities that are clerical or administrative in nature—such as opening and closing files, processing invoices, and running conflict of interest checks—are non-compensable and should not be billed by the Special Counsel.
- i. Travel Time:* Special Counsel may not bill for travel time. The City will not reimburse travel time for local travel, defined as 100 miles or less from Special Counsel’s office (“**Local Travel**”).

6. Reimbursable Expenses

Any expenses or costs over \$100 that have not been pre-approved in the budget must be approved in writing by the Supervising Attorney prior to being incurred. Fees and expenses incurred in excess of the approved budget will not be reimbursed. Pre-approved actual, reasonable, and necessary out-of-pocket expenses will be reimbursed at cost without mark-up. All expenses shall be documented, and copies of receipts shall be provided to the Supervising Attorney with Special Counsel’s invoice. Some examples of expenses which may qualify for reimbursement are:

- (i) Messenger Services and overnight or other expedited delivery services.* The City does not expect all documents to be hand-delivered or sent by an overnight or express delivery service, but such services may be used where appropriate under the circumstances per the request of the Supervising Attorney.
- (ii) Photocopying.* Photocopying is reimbursable if performed for Special Counsel by an outside photocopying vendor. In such instances, reimbursement will be made at the lower of Special Counsel’s actual cost or an amount not to exceed 10 cents per page for routine copies. Whenever Special Counsel seeks reimbursement for copying by an outside photocopying vendor, Special Counsel shall provide the City with a copy of the photocopying vendor’s invoice, which shall state the number of pages of each type copied and the cost per page for each of these services. In-house copying costs are not reimbursable.
- (iii) Lodging and Meals.* Lodging and meals are not reimbursable. The City will not reimburse for meals in connection with Local Travel.

7. Non-Reimbursable Expenses.

Routine administrative expenses are part of Special Counsel’s overhead, are included in Special Counsel’s hourly rate structure, and will not be reimbursed by the City. Examples of overhead expenses that the City will not reimburse include:

- (i)* Telephone calls, mobile phone charges, utilities, in-house photocopies, postage, secretarial and word processing services, and overtime.
- (ii)* Expenses related to Local Travel, including mileage, parking, or car services.
- (iii)* The cost of computerized legal research services, including Lexis and Westlaw.

APPENDIX 1. OUTSIDE COUNSEL/PROFESSIONAL SERVICES INVOICE REVIEW

(TO BE COMPLETED BY OUTSIDE COUNSEL/PROFESSIONAL SERVICES PROVIDER AND ATTACHED TO ALL BILLINGS)

Name of Firm: _____

Billing Attorney or Party: _____ For Services Rendered In (Month): _____

Data Invoice Sent: (1) _____

City Attorney's Office Supervising Attorney/Manager: _____

Matter: _____ Invoice No.: _____

Contract No.: _____ Contract Expiration Date: _____

___ 1. CONTRACT BILLING STATUS

BILLINGS	FEES	DISBURSEMENTS/EXPENSES	TOTAL
Contract Cap Amt.			
Invoice Amts. to Date:			
Current Invoice Amt.			
Balance Remaining:			

___ 2. EFFECTS OF CURRENT INVOICE ON CONTRACT CAP:

Within 15% of Contract Cap? YES NO

___ 3. Please provide the anticipated billings (for services) for the next **two months**.

Amounts: \$ and \$

___ 4. Have there been any developments that call for review of the project work plan or indicate the need to

amend the contract cap amount? YES (2) NO

___ 5. Have there been any changes in hourly rates or disbursement charge rates since the last invoice?

YES (2) NO

___ 6. Did you submit documentation for items over \$100?

YES (2) NO N/A

Signature of Firm's Billing Attorney/Party:

Date:

Section below to be completed by CAO Supervising Attorney/Manager

Date Form Reviewed	\$	OK to Pay	Signature
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(1) Please provide explanation if invoice is sent after 15th of month following services.

(2) Please explain.

APPENDIX 2
Invoice Cover Sheet

(Company/Firm Letterhead)

INVOICE COVER SHEET

(Invoice Date)

City & County of Denver
City Attorney's Office
CAOAdminBilling@denvergov.org

(Invoice Number)

RE: (Contract Number)

MATTER: (Name of Transaction _____)

STATEMENT

FOR LEGAL SERVICES RENDERED DURING THE PERIOD:

(Date(s) of Service Including Year)

Total (Month): \$ (Amount Including Costs)

Hours: (Number of Hours) @ (Hourly Rate) = (Total Amount)

Hours: (Number of Hours) @ (Hourly Rate) = (Total Amount)

Costs: \$ (Amount)

Firm: (Vendor)

(Signature)
Responsible Attorney: (Type Name Here)