

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 (the “City”) and **BKD, LLP**, a Missouri limited liability partnership, authorized to do business in Colorado and doing business at 1801 California Street Suite 2900, Denver, CO 80202 (the “Contractor”), jointly “the parties”.

The parties agree as follows:

1. COORDINATION AND LIAISON: The Contractor shall fully coordinate all services under the Agreement with the Denver Auditor, (“Denver Auditor”) or, the Denver Auditor’s Designee.

2. SERVICES TO BE PERFORMED:

a. As the Denver Auditor directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A, the Scope of Work**, to the City’s satisfaction.

b. The Contractor is ready, willing, and able to provide the services required by this Agreement.

c. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. TERM:

a. Initial Term. The Agreement will commence on the date of the City’s signature (the “Effective Date”) of this Agreement and will expire on December 31, 2021, (the “Initial Term.”)

b. Renewal Options. The City shall have the unilateral option to renew the Initial Term for up to five (5) additional one-year terms. The first Renewal Term shall be from January 1, 2022 to December 31, 2022; the second Renewal Term shall be from January 1, 2023 to December 31, 2023; the third Renewal Term shall be from January 1, 2024 to December 31, 2024; the fourth Renewal Term shall be from January 1, 2025 to December 31, 2025; and the fifth Renewal Term shall be from January 1, 2026 to December 31, 2026; (each an “Annual Renewal”). Subject to the Auditor’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date unless earlier terminated by the Auditor.

c. **Renewal Procedures; Non-Renewal.** The Maximum Payment shall be payable only if funds are appropriated by the City Council and for which an encumbrance has been made in each year for the ensuing fiscal year. The option of the City to renew the Initial Term, or any subsequent Renewal Term shall have been deemed to have been exercised upon the City making such appropriation and encumbrance for the next fiscal year. If such appropriation and encumbrance is not made for a future fiscal year, during which such Renewal Term occurs, then, the City shall be deemed to have failed to exercise its option to renew this Agreement for a subsequent Renewal Term, whereupon this Agreement will expire and terminate on the expiration date of the then current Initial Term or Renewal Term. Absent any notice of non-appropriation or any notice delivered in accordance with this section the Agreement shall be deemed to have been renewed. It is expressly understood and agreed that if the City exercises its option to renew this Agreement for a Renewal Term, the City's obligation to make payments to the Contractor shall only extend to monies appropriated and encumbered for the purposes and amounts covered by this Agreement.

4. **COMPENSATION AND PAYMENT:**

a. **Fee:** The Contractor's total compensation for its services rendered and costs incurred if all Renewal Terms are effected, is Five Hundred Thirty Eight Thousand Four Hundred Fifty Five Dollars (\$538,455.00) and annually shall not exceed the budget for the corresponding Annual Term to be paid based on monthly invoicing as described in this Paragraph 4. Amounts billed may not exceed the rates for each audit set forth in **Exhibit B**.

b. **Reimbursable Expenses:** All of the Contractor's expenses are contained in the budget in Exhibit B.

c. **Invoicing:** Contractor shall provide the City with monthly invoices in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

d. **Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation if all renewal terms are effected will not exceed Five Hundred Thirty Eight Thousand Four Hundred Fifty Five Dollars (\$538,455.00)

(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 Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor’s risk and without authorization under the Agreement.

(2) 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 this 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. **STATUS OF CONTRACTOR**: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. **TERMINATION**:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Denver Auditor.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor’s business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. The Contractor may resign and terminate this Agreement upon thirty (30) days prior written notice to the City at any time in accordance with the laws, regulations, and Professional Standards applicable to the type of services provided hereunder.

d. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

e. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

7. **EXAMINATION OF RECORDS:** The Contractor agrees that any duly authorized representative of the City, including the Manager of Finance and the Denver Auditor upon reasonable written notice to the Contractor shall, until the expiration of three (3) years after termination of the assessment services under this Agreement, unless the firm is notified in writing by the City of the need to extend the retention period, have access to and the right to examine the records of the Contractor reasonably necessary to substantiate the Contractor's invoices to and payments from the City for services performed hereunder. Access to working papers shall be provided upon request to representatives of the United States General Accounting Office or other appropriate government audit staffs under the supervision of the Contractor and at a location designated by the Contractor. The City agrees that the Contractor's assessment work papers are the property of the Contractor, that the work papers include information that is proprietary (for example, assessment programs and the Contractor's assessment process), and that it would be inappropriate for the City to have access to certain of the Contractor's work papers because, among other things, such access may provide the City information as to how the assessment is conducted by the Contractor and could thus compromise, or be viewed as compromising, an assessment or the assessment process. However, the City and the Contractor both acknowledge and agree that the Contractor's work papers may include information, prepared by the City or by the Contractor which may be useful to the City in responding, for example, to questions raised by the cognizant assessment agency as a result of its review or assessment of the City's financial statements. The Contractor agrees that if the City requests access to information in the Contractor's work papers as

to the composition of particular accounts contained in the City's financial statements or the City's accounting policies or practices (as opposed to information about the Contractor's administrative materials, assessment process or the nature and extent of assessment tests), the Contractor shall, upon reasonable notice and with representatives of the Contractor present, provide the City access to such information in the Contractor's work papers. The Contractor agrees to make working papers available either to the City or successor Contractors, upon request or approval of the City. In addition, the Contractor shall respond to the reasonable inquiries of the Denver Auditor.

In the event the Contractor is required pursuant to valid subpoena or other legal process to produce its work papers related to the assessment services performed hereunder in any judicial or administrative proceeding, the City shall reimburse the Contractor for its professional time and expenses incurred in responding to such request, but specifically excluding any attorney's fees or costs or any other third party fees or costs, and only to the extent that funds are available under the Maximum Contract Amount specified in Subparagraph 4(d) hereof.

Nothing in this Article or Agreement shall be deemed to waive or modify any rights of privilege available at law to the City. If Contractor is served or otherwise receives a subpoena for Contractor's records, reports, work papers related to the assessment services performed under this Agreement, the Contractor shall deliver written notice of each and every such subpoena to the Auditor and a copy to the City Attorney within ten (10) business days after the date of receipt or service of the subpoena.

Any records or documents in the custody of the Contractor that are available to the City under this Paragraph 7 may be redacted by the Contractor only to the extent necessary to protect the Contractor's proprietary and confidential information contained therein and to avoid an invasion of privacy.

8. 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 Contractor. 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.

9. INSURANCE:

a. General Conditions: Contractor 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. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, including 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 require notification to the City in the event any of the required policies be 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 City contract number listed on the signature page of this Agreement. 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, Contractor 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 number. Contractor 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 Contractor. The Contractor 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: Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's 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 Contractor'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, excess/umbrella liability (if required), auto liability, Contractor's and subcontractor's insurer shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all coverages required under this Agreement, [with the exception of Professional Liability], Contractor's insurer shall waive subrogation rights against the City.

e. **Subcontractors and Sub-consultants:** Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

f. **Workers' Compensation/Employer's Liability Insurance:** Contractor 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.

g. **Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

h. **Automobile Liability:** Contractor 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 (Errors & Omissions):** Contractor shall maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts

except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.

j. Technology Errors & Omissions including Cyber Liability: Contractor shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall be kept in force, or a Tail policy placed, for three (3) years.

10. DEFENSE AND INDEMNIFICATION:

a. Under the Charter of the City and County of Denver Article VI, the City Attorney is the only officer which may provide for the legal representation of the City. It is fundamental that only the City Attorney manage the legal representation and that the Contractor has no obligation to manage the representation or legal defense of the City. Additionally, the American Institute of Certified Public Accountants, Inc. asserts at 1.228.020 an “Independence Rule” that their member must be free of any and all influences that might compromise objective judgment which could be tainted if required without adequate safeguards to pay for the wrongdoings of a client. The requirements of both parties are intended to be complied with in this Section 10. Contractor agrees to indemnify and hold harmless City and its appointed and elected officials, agents and employees for, from and against all liabilities, claims, and damages to the City (“Claims”) arising out of or resulting from any negligent or intentionally tortious acts or omissions in connection with the professional services performed under this Agreement, to the extent caused by Contractor, its employees, agents, or subcontractors. Contractor is not obligated under this section to indemnify City for the negligent acts of City or any of its officials, agents, or employees.

b. If arising out of or resulting from Contractor’s negligent or intentionally tortious acts or omissions, Contractor’s duty to pay for the defense and pay to 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. Contractor’s duty to pay to defend and pay to indemnify City shall arise even if City is the only party sued by claimant.

c. If arising out of or resulting from Contractor’s negligent or intentionally tortious acts or omissions, Contractor shall pay for the defense of any and all Claims which may be brought or threatened against City and shall 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 payment in the nature of indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.

d. In meeting the Contractor's payment obligations under this Section 10, the City will not object to the Contractor seeking to satisfy the obligation through insurance in whole or in part. Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Contractor under the terms of this Section 10 payment obligation. The Contractor is responsible to 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.

11. 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 D.R.M.C. § 20-107, *et seq.* The Contractor 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.

12. ASSIGNMENT; SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Denver Auditor's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Denver Auditor has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

13. 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.*

14. **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 assigns, provided assignments are consented to in accordance with the terms of the Agreement.

15. **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 Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

16. **NO AUTHORITY TO BIND CITY TO CONTRACTS**: The Contractor 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 Denver Revised Municipal Code.

17. **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.

18. **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. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be 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. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a 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 if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

19. NOTICES: All notices required by the terms of the Agreement 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 Contractor at the address first above written, and if to the City at:

Denver Auditor or Designee
201 W. Colfax Ave., Dep't. 705
Denver, CO 80202

With a copy of any such notice to:

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.

20. NO EMPLOYMENT OF UNDOCUMENTED PERSONS TO PERFORM WORK UNDER THE AGREEMENT:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The Contractor certifies that:

(1) 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.

(2) 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 Contractor also agrees and represents that:

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

(2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

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

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required 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.

(5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Contractor shall also 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.

(6) 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 Denver Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor 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 Contractor 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 Contractor from submitting bids or proposals for future contracts with the City.

21. 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, 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 (Denver District Court).

22. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the Contractor 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 Contractor shall insert the foregoing provision in all subcontracts.

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

24. LEGAL AUTHORITY: Contractor 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 Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor 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 Contractor or the person signing the Agreement to enter into the Agreement.

25. 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.

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

27. INTELLECTUAL PROPERTY RIGHTS: The City and Contractor 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 Contractor and paid for by the City pursuant to this Agreement, in preliminary or final forms and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Contractor 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 Contractor hereby 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 copyright, patent, trademark and other intellectual property rights in perpetuity.

28. 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 Contractor'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.

29. ADVERTISING AND PUBLIC DISCLOSURE: The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Denver Auditor. 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 Contractor shall notify the Denver Auditor in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

30. CONFIDENTIAL INFORMATION:

a. City Information: Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data or confidential information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

b. Use of Proprietary Data or Confidential Information:

(i) Except as expressly provided by the terms of this Agreement, Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. Contractor further acknowledges that by providing this Proprietary Data of confidential information, the City is not granting to Contractor any right or license to use such data except as provided in this Agreement. Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the Proprietary Data or confidential information without written authorization from the Auditor.

(ii) Contractor agrees, with respect to the Proprietary Data and confidential information, that: (1) Contractor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Auditor; (2) Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such

data; and (3) Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City. Provided, however, Contractor may retain a copy of Proprietary Information and confidential information to the extent required by law, regulation, professional standards or internal document retention policies. Such copies shall be subject to the non-use and confidentiality obligations described in this Agreement.

c. **Employees and Sub-contractors:** Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. Contractor shall not disclose Proprietary Data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

d. **Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and confidential information on an “as is” basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. Contractor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, Contractor agrees to contact the City immediately.

e. **Contractor’s Information:** The City shall endeavor, to the extent provided by law, to comply with the confidentiality provisions set out in the End User License Agreement, provided, however, that The City understands and agrees that the Contractor software and documentation including, but not limited to, the Source Code, Object Code, the Interface Requirements Document(s) Acceptance Test Procedures, the Statement of Work, the software design, structure and organization, software screens, the user interface and the engineering know-how implemented in the software (collectively “Contractor Confidential Information”) constitute the valuable properties and trade secrets of Contractor, embodying substantial creative efforts which are secret, confidential, and not generally known by the public, and which secure to Contractor a

competitive advantage. The City agrees during the term of this Agreement and the license granted hereunder, and thereafter, to hold the Contractor Confidential Information including any copies thereof and any documentation related thereto, in strict confidence and to not permit any person or entity to obtain access to it except as required for the City's exercise of the license rights granted hereunder, and except as required by law. The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. (2003). In the event of a request to the City for disclosure of such information, the City shall advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its documents which it marked as proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

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

32. 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, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. 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.

33. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Contractor 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. Violation of these provisions or

refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

34. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

Signatures follow.

Contract Control Number: AUDIT-202158905-00
Contractor Name: BKD LLP

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of: 8/16/2021

SEAL



CITY AND COUNTY OF DENVER:

ATTEST:

DocuSigned by:

401385B9DD354C3...
Clerk and Recorder/Public Trustee
Paul Lopez

By: DocuSigned by:

83CED49359814EC...
Mayor
Michael B. Hancock

APPROVED AS TO FORM:

Attorney for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: DocuSigned by:

020D0000010240A...
Assistant City Attorney
Laurie J. Heydman

By: DocuSigned by:

973CC37073F04C1...
Chief Financial Officer
Brendan J Hanlon

By: DocuSigned by:

58A5EA19E528400...
Deputy Auditor
valerie walling

Contract Control Number:
Contractor Name:

AUDIT-202158905-00
BKD LLP

By:  _____

Name: Jodie Cates
(please print)

Title: Managing Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A SCOPE OF WORK WASTEWATER ENTERPRISE FUNDS AND DEFERRED COMPENSATION AUDITS

Monitoring expenditures and receiving exceptional value for your investment is important, but informed consumers understand value is about more than just price. Value from a professional CPA and advisory firm is about the quality of the work and the merit of the advice. Expect BKD's work to be accurate and insightful. We stand behind it. Our Public Company Accounting Oversight Board (PCAOB) inspections and AICPA peer reviews demonstrate the firm's record of excellence.

As evidenced by our inclusion in the **INSIDE Public Accounting** Best of the Best Firms list for the last ten years (as of August 2020), we also offer long-term consistency, exceptional performance and a national network of support and resources. BKD is large enough to help the City address a variety of financial issues. At the same time, we pride ourselves on hard work and low overhead, which keep our fees competitive. With our reputation, size, service and experience, you can still consider us an exceptional value.

Commitment to Serving the Public Sector

Firmwide, BKD serves approximately 500 public sector entities. As part of our commitment to remaining at the forefront of the public sector, leaders across our national governmental practice created the BKD Public Sector Center of Excellence. This group of professionals meets regularly to discuss important developments, legislative updates and challenges affecting governmental entities similar to the City.

In addition, our public sector involvement has enabled us to establish connections with numerous regulatory and auditing organizations, including:

- ▶ AICPA Governmental Audit Quality Center, as a member
- ▶ Government Finance Officers Association (GFOA)
- ▶ Governmental Accounting Standards Board (GASB)
- ▶ Office of Management and Budget (OMB)
- ▶ U.S. Government Accountability Office

We look forward to communicating best practices and forward-looking strategies to help the City thoughtfully consider the areas important to fulfilling your fiduciary responsibilities.

Extensive Experience with the COA Program

Participating in the GFOA's Certificate of Achievement (COA) for Excellence in Financial Reporting Program can help enhance the credibility of a city's financial statements, particularly with rating agencies. This also is key to increasing constituent and user confidence in the City's fiscal management practices and overall financial condition. Whether you currently issue a Comprehensive Annual Financial Report in connection with the COA Program, or intend to do so in the future, BKD can assist you. Hundreds of our clients participate in this program annually, which means we have the practical knowledge and expertise necessary to guide you through the process. Numerous BKD professionals also serve on the GFOA's Special Review Committee, providing us with firsthand insight into what GFOA reviewers are looking for when assessing the required reports.

In addition, with the short window for completing annual audits to meet the GFOA's established deadlines, we understand prompt and accurate professional services are critical in retaining your certificate. A core standard of BKD's Unmatched Client Service philosophy is Responsive Reliability, which guides our service process from initial planning to issuing our final report. You can expect our reports and communication to be efficient and in advance of GFOA's deadlines.

A Strong Local Presence

With a strong client-centered focus, we can bring the local, personal attention you desire with the national-level expertise and resources. BKD's Colorado practice was formed in 1993, with offices in Colorado Springs and Denver. There are approximately 100 professionals in our Denver and Colorado Springs offices. According to **ColoradoBiz** magazine, BKD is one of Colorado's 10 largest accounting firms. With specialized resources located in BKD's Colorado offices, the City can be confident we have the right people with the right training and experience assigned to your engagement.

Commitment to an Inclusive Corporate Culture

While many organizations, including BKD, have a policy to comply with federal laws and regulations from U.S. Equal Employment Opportunity Commission (EEOC), as well as with state and local laws, we don't stop there. We believe an EEOC policy that prohibits discrimination in employment on the basis of age, race, color, sex, sexual orientation, gender identity, national origin, religion, genetic information, disability, protected veteran status and other protected classifications is crucial to building a diverse workplace where each individual knows they are valued. We strive to move beyond the compliance function of our EEOC policy and embrace the reason these laws were created in the first place—to help create a work environment that offers all employees equal opportunities. We work diligently toward this goal every day, because having an inclusive culture doesn't just allow us to attract the talent we need to thrive; it benefits our clients by bringing a broad perspective to their services.

Encouraging Diversity & Inclusivity

Firmwide, BKD's SKY initiative seeks to emphasize and strengthen diversity, identify and remove cultural barriers and create a level playing field for all personnel. SKY focuses on:

- ▶ Cultivating an inclusive corporate culture
- ▶ Attracting and developing diverse talent
- ▶ Engaging firm leaders in strategies and programs aimed at improving diversity and inclusion

Through these three areas, we continue to build an environment where BKDers are empowered, and unique perspectives are valued.

BKD also takes specific actions to encourage diversity and inclusion, such as educational programs, conferences, sponsor-protégé mentoring relationships, managerial training, engaging with varied talent stewards and communities in the recruitment process as well as participation in the innovation of our solution offerings.

Client Service

The City wants to have trusted advisors who will deliver exceptional client service, focus on City needs and take the time to address the City's unique challenges. BKD intends to provide a level of high quality

service and personal attention you have received. BKD will continue to enhance our service delivery and bring value to the City.

We take our commitment so seriously, we penned five standards of Unmatched Client Service and supporting guidelines in **The BKD Experience: Unmatched Client Service**, a book that articulates the firm's philosophy and sets expectations for serving clients. Our five standards are:

Integrity First

We work hard to do what is right for you. You can rely on us to tell you what you need to hear.

True Expertise

From BKD, you can expect trained, capable staff and a high level of supervision by partners and experienced personnel.

Professional Demeanor

You can depend on prepared and attentive advisors to help meet your needs and provide new ideas.

Responsive Reliability

Accurate and thorough work combined with timely delivery is what you require. At BKD, we do not want it any other way.

Principled Innovation

We want you to succeed. For the City, that means looking for new ideas to streamline a process, better document work, train your staff and improve your effectiveness.

A. Independence

BKD is independent with respect to the City, as well as the City's component units, as defined by the Code of Professional Conduct of the AICPA and the U.S. Government Accountability Office's *Government Auditing Standards*. We are not aware of any relationship that would impair our independence.

BKD has provided financial statement audit services for the City, including a certain number of the City's component units, in the last five years. Currently BKD audits two of the City's component units and one of the City's related organizations. However, no relationship exists that would constitute a conflict of interest relative to performing the proposed audits.

B. License to Practice in Colorado

BKD is properly licensed to practice public accounting in the state of Colorado. All key professionals who would be assigned to your engagement are properly registered/licensed to practice in the state of Colorado, or able to practice in the state due to mobility laws, without the requirement to obtain an individual Colorado license.

Firm Qualifications & Experience

BKD is one of the largest CPA and advisory firms in the United States. We have 40 offices located in 18 states. Our approximately 2,900 CPAs, advisors and dedicated staff serve clients in all 50 states and clients with operations in more than 40 countries.

BKD has approximately 130 professionals who spend more than 50 percent of their billable hours providing audit services to governmental entities.

The City's requested services will primarily be provided by our Denver and Colorado Springs offices.

BKD CPAs & Advisors

1801 California Street | Suite 2900

Denver, CO 80202

BKD CPAs & Advisors

111 South Tejon Street | Suite 800

Colorado Springs, CO 80903

We anticipate providing separate teams for each portion of the City's requested audit services. A brief summary of each primary team member's experience and expected working capacity is outlined below.

Wastewater & Deferred Comp Team

- ▶ Wastewater/Deferred Comp Engagement Managing Director Jodie L. Cates, CPA – Approximately 25 years of experience (full-time)
- ▶ Concurring Review Partner Robert D. MaCoy, CPA – Approximately 30 years of experience (part-time)
- ▶ Wastewater/Deferred Comp Audit Director Steven W. Sauer, CPA – Approximately 13 years of experience (full-time)

IT Consultants (All Audits)

- ▶ IT Partner Cindy H. Boyle, CPA, CIA®, CITP, CISA – Approximately 30 years of experience (part-time)
- ▶ IT Director Richard F. Lucy, CPA, CISA, Ph.D. – Approximately 30 years of experience (part-time)

Assigning Additional Audit Team Members

Members of BKD National Public Sector Group provide audit services to a variety of public sector clients, including municipalities, state departments, school districts, charter schools, benefit plans and higher education institutions. They have extensive experience with a wide range of compliance and control testing under the Uniform Guidance. We plan to assign additional personnel to each respective team in a full-time capacity to complete the City's requested audits, ranging from associate to manager.

BKD is not a joint venture or consortium.

BKD is committed to providing quality audit services to our clients. We submit our work to external reviewers who challenge our approach and findings. We are proud of the findings from these reviews, which indicate our process works. Our report contained a rating of "Pass," which is the best peer review rating available under the current peer review standards. A copy of our most recent AICPA peer review report is included in the Appendix.

In addition, our peer review included inspection of engagements performed under *Government Auditing Standards*.

From time to time, selected BKD audit engagements are subject to desk review by federal or other regulators. Our most recent such review showed our work to be generally satisfactory, and no disciplinary or other administrative proceedings have resulted from those reviews.

**EXHIBIT B
BUDGET
WASTEWATER ENTERPRISE FUNDS AND DEFERRED COMPENSATION AUDITS**

Submitted by **BKD, LLP**

Primary Contact: Partner Christopher J. Telli, CPA, CIA®

Alternate Contact: Managing Director Jodie L. Cates, CPA

1801 California Street | Suite 2900 | Denver, CO 80202

Phone: 303.861.4545

March 30, 2021



1801 California Street, Suite 2900 | Denver, CO 80202-2606
303.861.4545 | Fax 303.832.5705 | bkd.com

March 30, 2021

Ms. Valerie G. Walling, CPA
Deputy Auditor
Denver Auditor's Office
201 West Colfax Avenue | #705
Denver, CO 80202

Re: City and County of Denver

Dear Ms. Walling:

Enclosed please find BKD CPAs & Advisors' sealed dollar-cost bid for RFP #AUD21-25, Request for Proposals for Professional Auditing Services. We, the undersigned individuals, are entitled to represent BKD, empowered to submit the bid and authorized to commit to a contract with the City and County of Denver (the City). If you have any questions about this proposal, you may reach us by phone or email as provided below.

Sincerely,

A handwritten signature in black ink, appearing to read "TJR".

Tammy J. Rivera, CPA
Managing Partner[^]
719.471.4290
tjrivera@bkd.com

A handwritten signature in black ink, appearing to read "Kevin Kemp".

Kevin Kemp, CPA
Partner
972.702.8262
kkemp@bkd.com

A handwritten signature in black ink, appearing to read "Jodie L. Cates".

Jodie L. Cates, CPA
Managing Director
303.861.4545
jcates@bkd.com

[^] Effective June 1, 2021

Pricing

1. Total All-Inclusive Maximum Price –BKD knows our clients do not like fee surprises. Neither do we. Our goal is to be candid and timely, and we want to answer questions the City may have about fees upfront. We determine our fees by evaluating a number of variables: the complexity of the work, the project’s scope, the time we will spend and the level of professional staff needed.

Proposed all-inclusive, maximum fees for Financial Statement Audits in Accordance with *Government Auditing Standards*, as well as Compliance Audits in Accordance with Title 2 *U.S. Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (the Uniform Guidance), are provided below.

Proposed All-Inclusive, Maximum Fees

City and County of Denver					
For the Years Ending December 31	2021	2022	2023	2024	2025
Financial Statement Audits in Accordance with <i>Government Auditing Standards</i>					
Wastewater Management Enterprise Fund (Wastewater)	\$63,250	\$64,585	\$65,920	\$67,075	\$68,410
Deferred Compensation Plan Trust Fund (Deferred Comp)	\$40,175	\$41,035	\$41,895	\$42,625	\$43,485
Percentage Increase per Year		Approximately 2.06 Percent	Approximately 2.02 Percent	Approximately 1.74 Percent	Approximately 1.94 Percent

2. Rates by Partner-, Specialist-, Supervisory-, and Staff-Level Times and Hours Anticipated for Each – The sealed dollar-cost bid should state the total hours and hourly rate required by staff classification supporting the resulting all-inclusive maximum fee for which the requested work will be done.

City and County of Denver															
For the Years Ending December 31	2021			2022			2023			2024			2025		
Staff Level	Hours	Hourly Rate	Total												
Financial Statement Audit in Accordance with Government Auditing Standards for Wastewater															
Partner/ Managing Director	25	\$370	\$9,250	25	\$375	\$9,375	25	\$380	\$9,500	25	\$385	\$9,625	25	\$390	\$9,750
Director	55	\$265	\$14,575	55	\$270	\$14,850	55	\$275	\$15,125	55	\$280	\$15,400	55	\$285	\$15,675
Manager/ Senior Associate	115	\$155	\$17,825	115	\$160	\$18,400	115	\$165	\$18,975	115	\$170	\$19,550	115	\$175	\$20,125
Associate	180	\$120	\$21,600	180	\$122	\$21,960	180	\$124	\$22,320	180	\$125	\$22,500	180	\$127	\$22,860
Subtotal	375		\$63,250	375		\$64,585	375		\$65,920	375		\$67,075	375		\$68,410
For the Years Ending December 31	2021			2022			2023			2024			2025		
Staff Level	Hours	Hourly Rate	Total												
Financial Statement Audit in Accordance with Government Auditing Standards for Deferred Comp															
Partner/ Managing Director	15	\$370	\$5,550	15	\$375	\$5,625	15	\$380	\$5,700	15	\$385	\$5,775	15	\$390	\$5,850
Director	25	\$265	\$6,625	25	\$270	\$6,750	25	\$275	\$6,875	25	\$280	\$7,000	25	\$285	\$7,125
Manager/ Senior Associate	80	\$155	\$12,400	80	\$160	\$12,800	80	\$165	\$13,200	80	\$170	\$13,600	80	\$175	\$14,000
Associate	130	\$120	\$15,600	130	\$122	\$15,860	130	\$124	\$16,120	130	\$125	\$16,250	130	\$127	\$16,510
Subtotal	250		\$40,175	250		\$41,035	250		\$41,895	250		\$42,625	250		\$43,485

Proposed fees are all-inclusive, and therefore include all travel and indirect costs.

Our fees may increase if our duties or responsibilities change because of new rules, regulations and accounting or auditing standards. We will consult with you should this happen and we understand the contract price may not be exceeded.

The fees above are priced per individual component of the engagement.

EXHIBIT C

(exhibit follows)

