

## **PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement is made and entered into as of the [\_\_\_\_ day of \_\_\_\_\_, 2019], by and between the City and County of Denver, Colorado, a legally and regularly created, established, organized and existing home rule city, municipal corporation and political subdivision under the provisions of Article XX of the Constitution of the State of Colorado (the “State”) and the Home Rule Charter of the City and County of Denver, Colorado (the “City”), and George K. Baum & Company or its successors or assigns (“Program Administrator”).

### **BACKGROUND**

WHEREAS, the City has authorized and sponsors its MetroDPA Program (“Program”) for down payment assistance (“Program Assistance”) to qualifying borrowers (“Eligible Borrowers”) through certain mortgage lending institutions participating in the Program (“Lenders”); and

WHEREAS, under the Program, the Lenders will originate certain qualified mortgage loans (“Mortgage Loans”) pursuant to written Program Guidelines and a Program Lender Agreement; and

WHEREAS, under the Program, upon the origination of qualified Mortgage Loans, a third party servicer approved by the City (each a “Servicer” and, collectively, the “Servicers”), will purchase the Mortgage Loans; and

WHEREAS, under the Program, the City intends to enter or has entered into a servicing agreement with each of the Servicers (a “Servicing Agreement”) for the Servicer to price and post the loan rates at which Mortgage Loans may be offered daily, to purchase Mortgage Loans from the participating Lenders, service the Mortgage Loans, to sell and deliver the Mortgage Loans (or related mortgage backed securities if such Mortgage Loans are pooled and sold as securities), and to pay the City its Program Fee and to pay Program Administrator its Program Administrator Fee; and

WHEREAS, the City desires to obtain from Program Administrator those certain program administrative services described in this Agreement, whereby Program Administrator will assist the City in effectuating, implementing and administering its Program; and

WHEREAS, Program Administrator desires to provide the City those certain administrative services described in this Agreement, whereby Program Administrator will assist the City in effectuating, implementing and administering the Program in a competent and professional manner; and

WHEREAS, Program Administrator represents that it has the professional experience and expertise to provide the necessary services and further warrants that it is ready, willing and able to perform in accordance with the terms and conditions as set forth in this Agreement;

### **TERMS AND CONDITIONS**

#### **ARTICLE 1**

#### **INCORPORATION OF BACKGROUND**

The Background information set forth above is incorporated by reference as if fully set forth herein.

#### **ARTICLE 2**

#### **DEFINITIONS AND INTERPRETATIONS**

##### **(a) Definitions**

The following words and phrases have the following meanings for purposes of this Agreement:

"Additional Services" means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Article 3, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the City require the approval of the Program Administrator in a written modification to this Agreement before Program Administrator is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

"Agreement" means this Professional Services Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"Services" means, collectively, the services, duties and responsibilities described in Article 3 and Exhibit 1 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"Subcontractor" means any person or entity with whom Program Administrator contracts to provide any part of the Services, including subcontractors of any tier, suppliers and materials providers, whether or not in privity with Program Administrator.

Capitalized terms used but not otherwise defined in this Agreement shall have the same meaning ascribed to such terms in the Program Guidelines or the Servicing Agreement.

(b) Interpretation

- (i) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.
- (ii) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.
- (iii) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- (iv) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.
- (v) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.
- (vi) All references to a number of days mean calendar days, unless expressly indicated otherwise.

**ARTICLE 3**  
**DUTIES AND RESPONSIBILITIES OF PROGRAM ADMINISTRATOR**

(a) Scope of Services

This description of Services is intended to be general in nature and is neither a complete description of Program Administrator's Services nor a limitation on the Services that Program Administrator is to provide under this Agreement. Program Administrator must provide the Services in accordance with the standards of

performance set forth in Section 3(c). The Services that Program Administrator must provide include, but are not limited to, those described in **Exhibit 1**, Scope of Services, which is attached to this Agreement and incorporated by reference as if fully set forth here.

(b) Deliverables

In carrying out its Services, Program Administrator must prepare or provide to the City various Deliverables. "Deliverables" include work product, such as written reviews, recommendations, reports and analyses, produced by Program Administrator for the City.

The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Program Administrator has failed to comply with the foregoing standards, it has thirty (30) days from the discovery to notify Program Administrator of its failure. If Program Administrator does not correct the failure, if it is possible to do so, within thirty (30) days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Article 9.

Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Program Administrator of its commitments under this Agreement.

(c) Standard of Performance

Program Administrator must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a program administrator performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Program Administrator acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and solely with respect to the use and safekeeping of that information (but not any of the other Services to be provided under this Agreement), Program Administrator contractually agrees to be held to the standard of care of a fiduciary.

Program Administrator must assure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Program Administrator must provide copies of any such licenses. Program Administrator remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Program Administrator or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the City and delivered in a timely manner consistent with the requirements of this Agreement.

It is expressly understood and agreed by the parties that this Agreement does not intend, and is not under any circumstances to be construed as requiring Program Administrator to perform or provide any services which may constitute the practice of law.

It is further expressly understood and agreed by the parties that, under this Agreement, Program Administrator is acting solely as a Program Administrator to the City for the Services, and is not providing the City with any recommendation on the issuance of municipal securities or municipal financial products, including but not limited to the investment of bond proceeds. Accordingly, under this Agreement, Program Administrator is not acting as a municipal advisor or financial advisor to the City (except as pertains to the handling and use of confidential information, as described in this subsection 3(c) of this Agreement above).

(d) Personnel

(i) Adequate Staffing

Program Administrator must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. Program Administrator must include among its staff the Key Personnel and positions as defined below. The level of staffing may be revised from time to time by notice in writing from Program Administrator to the City and with written consent of the City, which consent the City will not withhold unreasonably.

(e) Insurance

Program Administrator must provide and maintain at Program Administrator's own expense, during the term of this Agreement and any time period following expiration if Program Administrator is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified below, insuring all operations related to this Agreement.

When any professional Program Administrators perform Services in connection with this Agreement, Professional Liability Insurance covering acts, errors or omissions must be maintained with limits of not less than \$1,000,000 per claim \$2,000,000 policy aggregate limit. Coverage must include contractual liability and a severe ability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of Services on this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

Subcontractors, if any, performing Services for Program Administrator must maintain limits of not less than \$1,000,000 with the same terms in this Section 3(e).

(f) Confidentiality and Ownership of Documents

Program Administrator acknowledges and agrees that information regarding this Agreement is confidential and shall not be disclosed, directly, indirectly or by implication, or be used by Program Administrator in any way, whether during the term of this Agreement or at any time thereafter, except solely as required in the course of Program Administrator's performance hereunder. Program Administrator shall comply with the applicable privacy laws and regulations affecting City and will not disclose any of City's records, materials, or other data to any third party. Except for statistical analyses and reports compiled and prepared by the Program Administrator for distribution to the City, the City, or the Servicer, Program Administrator shall not have the right to compile and distribute statistical analyses and reports utilizing data derived from information or data obtained from City without the prior written approval of City. In the event such approval is given, any such reports published and distributed by Program Administrator shall be furnished to City without charge.

Program Administrator acknowledges and accepts that, in performance of all work under the terms of this Agreement, Program Administrator 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. Program Administrator agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Program Administrator shall be held in confidence and used only in the performance of its obligations under this Agreement. Program Administrator shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent consultant would to protect its own proprietary or confidential data.

For purposes of this paragraph, "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 Program Administrator by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

Notwithstanding the foregoing, 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., as amended. In the event of a request to the City for disclosure of such information, the City shall advise Program Administrator of such request in order to give Program Administrator 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 Program Administrator agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Program Administrator 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 Program Administrator'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.

(g) Examination of Records and Audits

The Program Administrator agrees that the City Auditor or any of its duly authorized representatives shall, until expiration of three (3) years after the final payment under this Agreement, and upon reasonable advance written request to the Program Administrator, have access and the right to examine any books, documents, papers, canceled checks, bank statements, purveyor's and other invoices, materials, data and records of the Program Administrator related to this Agreement, or to Program Administrator's compliance with any term, condition or provision thereof. The Program Administrator shall be responsible for establishing and maintaining records sufficient to document the costs associated with performance under the terms of this Contract.

The Program Administrator further agrees that it shall include in all of its subcontracts hereunder a provision to the effect that the Program Administrator agrees that the City Auditor or any of its duly authorized representatives shall, until expiration of two (2) years after final payment under the subcontract, have access and the right to examine any books, documents, papers, canceled checks, bank statements, purveyor's and other invoices and records of such subcontractor involving transactions relating to the subcontract, or to such subcontractor's compliance with any term, condition or provision thereunder or under the contract.

(h) Subcontracting of this Agreement or Agreement Funds

This Agreement shall not be subcontracted without the advance written approval of the City, which approval shall be granted or withheld at the sole, reasonable discretion of the City. In no case, however, shall such approval relieve the Program Administrator from its obligations or change the terms of this Agreement. The Program Administrator shall not transfer or assign any Agreement funds or any interest therein due or to become due without the advance written approval of the City. The unauthorized subcontracting or the unauthorized transfer or assignment of any Agreement funds, either in whole or in part, or any interest therein, which shall be due or are to become due the Program Administrator shall have no effect on the City and are null and void.

**ARTICLE 4**

## TERM OF PERFORMANCE

### (a) Term of Performance

This Agreement takes effect when approved and executed by the City and its term shall begin on [\_\_\_\_\_, 2019] ("Effective Date") and continue until February 1, 2023 (the "Initial Term"), and shall automatically extend for a four-year term unless either party provides written notice of its intent not to extend within thirty (30) Calendar Days of the expiration of the Initial Term.

### (b) Timeliness of Performance

- (i) Program Administrator must provide the Services and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions set forth in **Exhibit 1**. Further, Program Administrator acknowledges that the failure of Program Administrator to comply with the time limits described in this Agreement may result in economic or other losses to the City.
- (ii) Neither Program Administrator nor Program Administrator's agents, employees or subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Program Administrator by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

## ARTICLE 5 COMPENSATION

Program Administrator will be paid a per Mortgage Loan fee (the "Program Administrator Fee") for the Services it provides under this Agreement. Pursuant to the Servicing Agreement by and between the City and each Servicer, the City shall direct each Servicer to timely pay Program Administrator the Program Administrator Fee for its performance of its duties hereunder equal to (i) twenty-five (25) basis points (0.25%) of the first mortgage amount for each and every Fannie Mae, Freddie Mac, FHA, VA or USDA-RD (each as defined in the Servicing Agreement) Mortgage Loan purchased by the respective Servicer, excepting only loans described in section (ii) below, in its capacity as the City's Servicer and (ii) fifty (50) basis points (0.50%) of the first mortgage amount for each and every Freddie Mac City Advantage (Cashflow) Mortgage Loan purchased by the respective Servicer, in its capacity as the City's Servicer. Program Administrator shall submit an invoice to each Servicer by the tenth (10<sup>th</sup>) day of each month for all Program Administrator and Program Fees for Mortgage Loans purchased by that Servicer, in its respective capacity as the City's Servicer, during the preceding month. The City agrees to direct the Servicers to promptly pay Program Administrator for all invoiced Program Administrator and Program Fees.

## ARTICLE 6 DISPUTES

In the event of a dispute arising out of or relating to this Agreement, the parties agree that their representatives will meet whenever necessary to promptly resolve any problems that occur relating to the administration or performance of this Agreement. The parties will exercise reasonable efforts to resolve in good faith any such problems. In furtherance of this goal, all reasonable requests for information, not otherwise inconsistent with the terms of this Agreement, made by one party to the other in the course of attempting to resolve disputes will be honored.

## ARTICLE 7 COMPLIANCE WITH ALL LAWS

Both parties shall observe and comply with the applicable laws, ordinances, regulations and codes of the Federal, State, City and other local government agencies which may in any manner affect the performance of this

Agreement.

**ARTICLE 8**  
**SPECIAL CONDITIONS**

(a) Program Administrator's Representations

In connection with signing and carrying out this Agreement, Program Administrator represents that:

- (i) it is appropriately licensed to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Program Administrator is not appropriately licensed;
- (ii) it is financially solvent; it and each of its employees, agents and agents performing work on its behalf are competent to perform the Services required under this Agreement; and Program Administrator is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;
- (iii) it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements.

(b) Ethics

In addition to the foregoing representations, Program Administrator further represents that:

- (i) no officer, agent or employee of the City is employed by Program Administrator or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics.
- (ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any subcontractor to Program Administrator or anyone associated with them, as an inducement for the award of a subcontract.

(c) Separate Purchase Agreement by and between Program Administrator and Servicer

With the prior written consent of the City, which consent shall not be unreasonably withheld, Program Administrator may enter into a separate written agreement with a Servicer (a "Purchase Agreement") whereby the Servicer transfers and assigns to Program Administrator, and Program Administrator assumes from that Servicer, responsibility to perform certain specified Program services, including pricing of Mortgage Loans, preparation of Rate Sheets, and purchase of Certificates comprised of certain Mortgage Loans, if applicable. Any applicable fee for such services shall be disclosed to the City and paid by the Servicer.

**ARTICLE 9**  
**EVENTS OF DEFAULT, REMEDIES, TERMINATION AND SUSPENSION**

(a) Events of Default Defined

The following constitute "Events of Default" under this Agreement:

- (i) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the

performance, made by Program Administrator to the City.

- (ii) Program Administrator's material failure to perform any of its obligations under this Agreement including the following:
  - (1) Failure due to a reason or circumstances within Program Administrator's reasonable control to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;
  - (2) Failure to perform the Services in a manner reasonably satisfactory to the City or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
  - (3) Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory; and
  - (4) Discontinuance of the Services for reasons within Program Administrator's reasonable control.
- (iii) Any change of individuals performing the services without the prior written approval of the City, which approval the City will not unreasonably withhold.

(b) Remedies

The occurrence of any Event of Default permits the City, in its sole discretion, to declare Program Administrator in default. The City shall give Program Administrator an opportunity to cure the default within thirty (30) days of receipt of a Cure Notice (as defined herein), unless extended by the City (the "Cure Period"). Whether to declare Program Administrator in default is within the sole discretion of the City.

The City will give Program Administrator written notice of the default in the form of a cure notice ("Cure Notice"). The City may give a default notice ("Default Notice") if Program Administrator fails to effect a cure within the Cure Period. When a Default Notice with intent to terminate is given as provided in this Section 9.b and Article 11, Program Administrator must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City. After giving a Default Notice, the City may invoke any or all of the following remedies:

- (i) The right to take over and complete the Services, or any part of them. In addition, the City may recover any cost it reasonably incurs to complete the Services.
- (ii) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;
- (iii) The right of specific performance, an injunction or any other appropriate equitable remedy;
- (iv) The right to money damages but only as provided in (i) above;
- (v) The right to withhold all or any part of Program Administrator's compensation under this Agreement;
- (vi) The right to consider Program Administrator non-responsible in future contracts to be awarded by the City.

If the City considers it to be in the City's best interests, it may elect not to declare default or to terminate this



Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Program Administrator to continue to provide the Services despite one or more uncured Events of Default, Program Administrator is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default impairs any such right or power, nor is it a waiver of any Event of Default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.

(c) Early Termination

In addition to termination under Sections 9 (b) of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the City to Program Administrator. The City will give notice to Program Administrator in accordance with the provisions of Article 11. The effective date of termination will be the date the notice is received by Program Administrator or the date stated in the notice, whichever is later. If the City elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City effective ten (10) days after the date the notice is considered received as provided under Article 11 of this Agreement (if no date is given) or upon the effective date stated in the notice.

After the notice is received, Program Administrator must restrict its activities, and those of its subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 5, but if any compensation is described or provided for on the basis of a period longer than ten (10) days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The City and Program Administrator will engage in a good faith attempt to agree on the amount of compensation to be paid to Program Administrator. The payment so made to Program Administrator is in full settlement for all Services satisfactorily performed under this Agreement.

If the City's election to terminate this Agreement for default under Sections 9 (b) is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 9(c).

(d) Suspension

The City may at any time request that Program Administrator suspend its Services, or any part of them, by giving fifteen (15) days prior written notice to Program Administrator or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Program Administrator must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the City and such equitable extension of time as may be mutually agreed upon by the City and Program Administrator when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Program Administrator as a result of recommencing the Services must be treated in accordance with the compensation provisions under Article 5 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of forty-five (45) days within any one (1) year of this Agreement. If the total number of days of suspension exceeds forty-five (45) days,

Program Administrator by written notice may treat the suspension as an early termination of this Agreement under Section 9(c).

**ARTICLE 10**  
**GENERAL CONDITIONS**

(a) Entire Agreement

This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not expressly addressed in this Agreement.

(b) Counterparts

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

(c) Modifications and Amendments

This Agreement may be amended, changed, modified, altered or terminated only in writing and upon approval of the Chief Financial Officer of the City, or in the absence of the Chief Financial Officer, the Executive Director of the Office of Economic Development of the City, or their designees, and the other Parties hereto.

(d) Venue and Governing Law

Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

(e) Severability

If any provision of this Agreement is held or considered to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

(f) Assigns

All of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

(g) Independent Program Administrator

This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Program Administrator and the City. The rights and the obligations of the parties are only those expressly set forth in this Agreement. Program Administrator will perform under this Agreement as an independent Program Administrator and not as a representative, employee, agent, or partner of the City.

(h) Waiver

No rights may be waived except by an instrument of writing signed by the party charged with such waiver. No assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

(i) No Discrimination in Employment

In connection with the performance of all work under this Agreement, the Program Administrator agrees not to refuse to hire, discharge, promote, or demote, or to 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; and further agrees to insert the foregoing provision in all contracts entered into in furtherance of this Agreement. The Program Administrator agrees to insert the foregoing provision in any subcontract of services that will be provided under this Agreement, which subcontract relates only to the implementation of the Program.

(j) Subject to Appropriation; No Multiple Year Obligation.

It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the City Council of the City for the purpose of this Agreement, encumbered for the purpose of this Agreement and paid into the treasury of the City. The Program Administrator acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple- fiscal year direct or indirect debt or financial obligation of the City within the meaning of any constitutional or statutory deb limitations or restriction.

(k) Colorado Governmental Immunity Act.

The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes, as amended.

(l) Conflict of Interest.

A. No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement; and the Program Administrator 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. Sections 2-51, *et seq.* or the Charter Sections 1.2.8, 1.2.9, and 1.2.12.

B. The Program Administrator shall not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Program Administrator represents that the Program Administrator 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 Program Administrator by placing the Program Administrator's own interests, or the interests of any party with whom the Program Administrator has a contractual arrangement, in conflict with those of the City. The City, in its sole

discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after the City has given the Program Administrator written notice which describes the conflict.

(m) No Employment of Illegal Aliens to Perform Work Under this 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 Program Administrator 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 services the Program Administrator is obligated to provide under this Agreement.

ii. It will participate in the E-Verify Program, as defined in Section 8-17.5-101(3.7), Colorado Revised Statutes, as amended, to confirm the employment eligibility of all employees who are newly hired for employment to perform services the Program Administrator is obligated to provide under this Agreement.

c. The Program Administrator also agrees that:

i. It shall not knowingly employ or contract with an illegal alien to perform services the Program Administrator is obligated to provide under this Agreement.

ii. It shall not enter into a contract with a subcontractor to perform services the Program Administrator is obligated to provide under this Agreement that fails to certify to the Program Administrator that it shall not knowingly employ or contract with an illegal alien to perform services the Program Administrator is obligated to provide under this Agreement.

iii. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform services the Program Administrator is obligated to provide 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 this Agreement, and that the Program Administrator shall comply with any and all federal requirements related to the 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 subcontractor performing services the Program Administrator is obligated to provide under this Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. The Program Administrator will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

vi. It will comply with any reasonable request made by the Colorado Department of Labor and Employment or the City Auditor, respectively, 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, respectively.

d. If the Program Administrator violates any provision of Section 6.18(c), the City may terminate this Agreement. If this Agreement is so terminated, the Program Administrator shall be liable for actual and damages to the City resulting from such violation. Any such termination of this Agreement may also, at the discretion of the City, constitute grounds for disqualifying the Program Administrator from submitting bids or proposals for future contracts with the City.

(n) City Execution of Agreement.

This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City.

(o) Electronic Signatures and Electronic Records.

The Program Administrator consents to the use of electronic signatures by the City, unless original signatures are otherwise required by law. This 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 hereto agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties hereto agree not to object to the admissibility of this 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.

(p) Reasonableness of Consent or Approval.

Whenever under this Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either party, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

## ARTICLE 11 NOTICES

All notices required pursuant to this Agreement shall be in writing and addressed to the parties at their respective addresses set forth below. All such notices shall be deemed duly given if hand delivered or if deposited in the United States mail, postage prepaid, registered or certified, return receipt requested. Notice as provided herein does not waive service of summons or process.

If to the City:

City and County of Denver, Colorado  
Attn: Chief Financial Officer  
Department of Finance  
201 West Colfax Avenue  
Department 1010  
Denver, CO 80202  
E-mail: Andrew.Johnston@denvergov.org

with copies to:

Office of Economic Development  
Attn: Executive Director  
201 West Colfax Avenue  
Department 1011  
Denver, CO 80202  
E-mail: douglas.selbee@denvergov.org

Denver City Attorney's Office  
Attn: City Attorney  
1437 Bannock Street  
Room 353  
Denver, CO 80202  
E-mail: JoAnn.Weinstein@denvergov.org

If to Program Administrator: George K. Baum & Company  
Attention: GKB Housing Group  
1400 Wewatta, Suite 800  
Denver, Colorado 80202

With a copy to:

George K. Baum & Company  
Attention: General Counsel  
4801 Main Street, Suite 500  
Kansas City, MO 64112

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 11. Notices delivered by mail are considered received three days after mailing in accordance with this Article 11. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

## **ARTICLE 12 AUTHORITY**

Execution of this Agreement by Program Administrator is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Program Administrator have been made with complete and full authority to commit Program Administrator to all terms and conditions of this Agreement, including each and every representation contained herein.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, the City and the Program Administrator have caused this Agreement to be signed in their respective names by their respective duly authorized officers, all as of the date first above written.

**ATTEST:**

**CITY AND COUNTY OF DENVER**

By: \_\_\_\_\_  
Debra Johnson,  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

By: \_\_\_\_\_  
Michael B. Hancock, MAYOR

**APPROVED AS TO FORM:**

**Kristin M. Bronson**  
City Attorney for the City and County of Denver

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Brendan J. Hanlon, CFO

By: \_\_\_\_\_  
Timothy O'Brien, Auditor

GEORGE K. BAUM & COMPANY, as Program Administrator

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Program Administrator signature page to Professional Management Services Agreement]



## EXHIBIT 1

### Scope of Services

**Consulting Services for the Program.** The Program Administrator will assist the City in effectuating, implementing, administering and coordinating the City's metroDPA Program in accordance with the City's objectives and directives. The consulting services to be provided by the Program Administrator shall include the following:

- Assist in recruiting Servicers and facilitating the implementation of each Servicer's product and servicing platform for the City.
- Assist in the preparation and review of the Program Guidelines and other related Program documents.
- Assist with the review of business terms in agreements between the City and its Servicers. It is expressly understood and agreed that the parties do not intend for the Program Administrator to provide or perform services under the Agreement which may constitute or be construed as the practice of law.
- Assist with Mortgage Loan product design, development and optimization for the Program.
- Assist with the creation of product term sheets and other collateral material for the Program.
- Assist with Lender recruitment for participation in the Program.
- Assist with Program training for Lenders and realtors.
- Coordinate efforts and exchange of Program information by and between the City and its Servicers.
- Assist with and confirm that the respective Servicer is pricing the Mortgage Loans and posting Mortgage Loan rates. Where applicable, and pursuant to a separate written agreement by and between the Program Administrator and a Servicer, the Program Administrator may purchase from a Servicer certain TBA-Eligible mortgage-backed certificates, payments on which are guaranteed by GNMA, Freddie Mac or Fannie Mae ("Certificates"), issued by such Servicer and comprised of certain qualified Mortgage Loans pooled by such Servicer, for delivery by the Program Administrator into the TBA market.
- With the prior written consent of the City, which consent shall not be unreasonably withheld, Program Administrator may enter into a separate written agreement with a Servicer (a "Purchase Agreement") whereby the Servicer transfers and assigns to Program Administrator, and Program Administrator assumes from that Servicer, responsibility to perform certain specified Program services, including pricing of Mortgage Loans, preparation of Rate Sheets, and purchase of Certificates comprised of certain Mortgage Loans, if applicable. Any applicable fee for such services shall be disclosed to the City and paid by the Servicer.
- Provide recommendations to the City on Program related matters, products and features, as requested or warranted from time to time.
- Provide analysis of market conditions and opportunities.
- Web site design, either for the City or for the Servicer
- Work with other on-line subcontractors to provide an on-line portal for the preparation of Second Loan documents, if applicable.
- Provide weekly and monthly loan pipeline reports as required by the City
- Provide any other information reasonably requested by the City concerning the Program.
- As required, the invoicing of Program fees
- As required, the collection and storage of Borrower and 2<sup>nd</sup> loan documents, both originals and copies.

- Key Personnel means Scott Riffle, Marc Paskulin, Dede Cross, Koen Browning and other Program Administrator employees who are invited for specific tasks, as required.