

## 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 doing business at 111 S. Tejon Street Suite 800 Colorado Springs, CO 80903 (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 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, 2017 (the “Initial Term”).

b. **Optional Renewal Terms:** The parties shall have option to renew the Agreement after the expiration of the Initial Term for up to two (2) additional one-year terms (each an “Optional Renewal”) upon Notice of the Denver Auditor, and subject to (i) appropriation of sufficient amounts for the subsequent year by City Council, and (ii) an executed amendment to this Agreement. The first Optional Renewal Term shall be from January 1, 2018 to December 31, 2018; and the second Optional Renewal Term shall be from January 1, 2019 to December 31, 2019. Each Optional Renewal Term shall be referred to herein as a “Renewal Term”.

c. **Renewal Procedures; Non-Renewal.** The option to renew for an Optional Renewal Term shall be exercised upon amendment to this Agreement and if necessary to the Scope of Work and the City making such appropriation and encumbrance for the next fiscal year. Payments authorized pursuant to the amended Maximum Contract Amount (defined below) shall be payable at the rates shown on **Exhibit B** and 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. If such sufficient 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. 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 sole compensation for its services rendered and costs incurred under the Agreement is Seven Hundred Ninety One Thousand Eight Hundred Dollars (\$791,800.00) to be paid based on monthly invoice up to a total of Seventy Nine Thousand Seven Hundred Dollars (\$79,700.00) in calendar year 2016 and the remainder of Seven Hundred Twelve Thousand One Hundred Dollars (\$712,100.00) to be paid in 2017 for audit of the 2016 Comprehensive Annual Financial Reports completion of all services and production by the Contractor of an invoice acceptable to the City. Amounts billed may not exceed the rates set forth in **Exhibit B**.

b. **Reimbursable Expenses:** No separate expenses are to be reimbursed under this agreement.

c. **Invoicing:** Contractor shall provide the City with a monthly invoice 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 will not exceed Seven Hundred Ninety One Thousand Eight Hundred Dollars (\$791,800.00) (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, kick backs, 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 as the City's independent, external auditor and terminate this Agreement upon one hundred twenty (120) 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 auditing 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. Upon reasonable written notice to the City and the Contractor, representatives of the cognizant audit agency (or its designee) pursuant to the federal Single Audit Act, other auditing agencies, and the United States General Accounting Office, shall, until the expiration of three (3) years after termination of the auditing 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 audit workpapers are the property of the Contractor, that the workpapers include information that is proprietary (for example, audit programs and the Contractor's audit process), and that it would be inappropriate for the City to have access to certain of the Contractor's workpapers because, among other things, such access may provide the City information as to how the audit is conducted by the Contractor and could thus compromise, or be viewed as compromising, an audit or the audit process. However, the City and the Contractor both acknowledge and agree that the Contractor's workpapers may include information, prepared by the City or by the Contractor as to the composition of particular accounts contained in the City's financial statements or the City's accounting policies or accounting practices (as opposed to information about the Contractor's administrative materials, audit process or the nature and extent of audit tests), and that such information may be useful to the City in responding, for example, to questions raised by the cognizant audit agency as a result of its review or audit of the City's financial statements. The Contractor agrees that if the City requests access to information in the Contractor's workpapers 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, audit process or the nature and extent of audit 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 workpapers. 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 successor auditors.

In the event the Contractor is required pursuant to valid subpoena or other legal process to produce its workpapers related to the auditing 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 auditing services performed under this Agreement, the Contractor shall deliver written notice of each and every

such subpoena to the Manager 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, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the 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. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. 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 shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. 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, Auto Liability, and Excess Liability/Umbrella (if required) Contractor's insurer(s) 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, except professional liability, Contractor's insurer shall waive subrogation rights against the City.

e. **Subcontractors and Sub-consultants:** All subcontractors and sub-consultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and sub-consultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

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. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

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

h. **Business Automobile Liability:** 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:** Contractor shall maintain professional liability limits of \$1,000,000.00 per claim and \$1,000,000.00 aggregate policy limit.

j. **Additional Provisions:**

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

(a) That this Agreement is an Insured Contract under the policy;

(b) Defense costs are outside the limits of liability;

(c) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and

(d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(ii) For claims-made coverage:



(a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(b) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**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. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **NO EMPLOYMENT OF ILLEGAL ALIENS 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.

20. **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).

21. **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 variance, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

22. **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.

23. **LEGAL AUTHORITY:** Consultant 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.

24. **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.

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

26. **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.

27. **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.

28. **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.

**29. 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, confidential information or any other data or 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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-201629144-00

**Contractor Name:** B K D LLP

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of  
Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** AUDIT-201629144-00

**Contractor Name:** B K D LLP

By: 

Name: C Travis Webb  
(please print)

Title: Partner  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



EXHIBIT A

SCOPE OF WORK

ENGAGEMENT OBJECTIVES AND SCOPE

We will audit the basic financial statements of **CITY AND COUNTY OF DENVER** as of and for the year ended December 31, 2016, and the related notes to the financial statements.

Our audit will be conducted with the objectives of:

- ✓ Expressing an opinion on the financial statements
- ✓ Issuing a report on your compliance based on the audit of your financial statements.
- ✓ Issuing a report on your internal control over financial reporting based on the audit of your financial statements.
- ✓ Expressing an opinion on your compliance, in all material respects, with the types of compliance requirements described in the *U.S. Office of Management and Budget (OMB) Compliance Supplement* that are applicable to each of your major federal award programs.
- ✓ Issuing a report on your internal control over compliance based on the audit of your compliance with the types of compliance requirements that are applicable to each of your major federal award programs.
- ✓ Issuing a report on your schedule of expenditures of federal awards.

We will also audit the stand-alone basic financial statements of the Airport System Enterprise Fund of the City and County of Denver (the Airport) as of and for the year ended December 31, 2016, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

The objectives of our audit of the Airport are:

- ✓ Expression of opinions on the conformity of your financial statements, in all material respects, with accounting principles generally accepted in the United States of America
- ✓ Issuance of a report on your compliance based on the audit of your financial statements
- ✓ Issuance of a report on your internal control over financial reporting based on the audit of your financial statements
- ✓ Issuance of a report on compliance with requirements applicable to the Passenger Facility Charge program for the year ended December 31, 2016

- ✓ Issuance of a report on internal control over compliance with requirements applicable to the Passenger Facility Charge program for the year ended December 31, 2016
- ✓ Issuance a report on your schedule of Passenger Facility Charges revenues and expenditures for the year ended December 31, 2016

We will also express an opinion on whether the accompanying combining and individual fund financial statements are fairly stated, in all material respects, in relation to the basic financial statements taken as a whole.

### **OUR RESPONSIBILITIES**

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS), the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and *Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards require that we plan and perform:

- ✓ The audit of the financial statements to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by fraud or error. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
- ✓ The audit of compliance with the types of compliance requirements described in the *OMB Compliance Supplement* applicable to each major federal award program to obtain reasonable rather than absolute assurance about whether noncompliance having a direct and material effect on a major federal award program occurred.
- ✓ The audit of compliance with the types of compliance requirements described in the Federal Aviation Administration guidelines applicable to Passenger Facility Charges to obtain reasonable rather than absolute assurance about whether noncompliance having a direct and material effect on the Passenger Facility Charge program occurred

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance having a direct and material effect may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS.

Likewise, our audits of compliance with the types of compliance requirements applicable to each major federal award program and of compliance with the types of compliance requirements applicable to the Passenger Facility Charge program are designed to detect noncompliance having direct and material effect on a major program or the Airport System's Passenger Facility Charge

program. Consequently, our audits will not necessarily detect noncompliance having an indirect and material or an immaterial effect on any federal award program or the Airport System' Passenger Facility Charge program.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit. Also, in the future, procedures could become inadequate because of changes in conditions or deterioration in design or operation. Two or more people may also circumvent controls, or management may override the system.

We are available to perform additional procedures with regard to fraud detection and prevention at your request, subject to completion of our normal engagement acceptance procedures. The actual terms and fees of such an engagement would be documented in a manner consistent with the Agreement.

Chris Telli is responsible for supervising the engagement and authorizing the signing of the report or reports. Engagement staffing levels consistent with the 2016 proposal will be provided and any substantive change in staffing will be discussed and approved with the City as part of the engagement.

We will issue a written report upon completion of our audit of CITY AND COUNTY OF DENVER's financial statements. Our report will be addressed to the Audit Committee of the CITY AND COUNTY OF DENVER. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis of matter or other matter paragraph(s), or withdraw from the engagement. If we discover conditions that may prohibit us from issuing a standard report, we will notify you as well. In such circumstances, further arrangements may be necessary to continue our engagement.

We will also express an opinion on whether the accompanying combining and individual fund financial statements and schedules (supplementary information) are fairly stated, in all material respects, in relation to the financial statements as a whole.

### **YOUR RESPONSIBILITIES**

Our audit will be conducted on the basis that management and, where appropriate, those charged with governance acknowledge and understand that they have responsibility:

- a. for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;

- b. for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;
- c. for identifying and ensuring compliance with the laws, regulations, contracts and grants applicable to your activities (including your federal award programs); and
- d. to provide us with
  - i. access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters;
  - ii. additional information that we may request from management for the purpose of the audit; and
  - iii. unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.

As part of our audit process, we will request from management and, where appropriate, those charged with governance, written confirmation acknowledging certain responsibilities outlined in this engagement letter and confirming:

- The availability of this information
- Certain representations made during the audits for all periods presented
- The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole

The results of our tests of compliance and internal control over financial reporting performed in connection with our audit of the financial statements may not fully meet the reasonable needs of report users. Management is responsible for obtaining audits, examinations, agreed-upon procedures or other engagements that satisfy relevant legal, regulatory or contractual requirements or fully meet other reasonable user needs.

With regard to supplementary information:

- Management is responsible for its preparation in accordance with applicable criteria
- Management will provide certain written representations regarding the supplementary information at the conclusion of our engagement
- Management will include our report on this supplementary information in any document that contains this supplementary information and indicates we have reported on the supplementary information

- Management will make the supplementary information readily available to intended users if it is not presented with the audited financial statements

## **COMMUNICATION WITH THOSE CHARGED WITH GOVERNANCE**

We will report to you, in writing, the following matters:

The auditor's responsibility under auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and U.S. Office of Management and Budget (OMB) replace Title 2 U.S. Code of Federal Regulations (CFR) *Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

- ✓ An overview of the planned scope and timing of the audits
- ✓ Significant findings from the audits
- ✓ Other matters required to be communicated in accordance with AU-C Section 260: *The Auditor's Communication with Those Charged with Governance*, AU-C Section 265: *Communicating Internal Control Related Matters Identified in an Audit* and AU-C Section 935: *Compliance Audits*

## **ENGAGEMENT FEES**

Our fees will be as agreed upon in the Agreement as shown in Exhibit B.

## **OTHER ENGAGEMENT MATTERS AND LIMITATIONS**

BKD is not acting as your municipal advisor under Section 15B of the *Securities Exchange Act of 1934*, as amended. As such, BKD is not recommending any action to you and does not owe you a fiduciary duty with respect to any information or communications regarding municipal financial products or the issuance of municipal securities. You should discuss such information or communications with any and all internal or external advisors and experts you deem appropriate before acting on any such information or material provided by BKD.

We may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about you to third-party service providers in serving your account. We remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of confidential information. In the event we are unable to secure an appropriate confidentiality agreement, confidential information will not be shared with the third-party service provider.



We will, at our discretion or upon your request, deliver financial or other confidential information to you electronically via email or other mechanism. You recognize and accept the risk involved, particularly in email delivery as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.

**BKD, LLP** shall not mandate nor require that the City and County of Denver obtain **BKD, LLP's** consent when the City and County of Denver includes its audited financial statements and **BKD, LLP's** audit report in a City and County of Denver bond offering document. The City and County of Denver's offering document should include the following language: "***BKD, LLP, the City's independent external auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. BKD, LLP also has not performed any procedures related to this official statement.***"

Should the City and County of Denver request our involvement in a bond offering, we will need to be engaged to perform certain procedures required by our firm and the standards of the American Institute of Certified Public Accountants (AICPA) in connection with providing those additional services. An amendment or separate agreement and separate engagement letter would be required at that time to clarify the procedures to be performed by us and the fees for those services in connection with the bond offering.

You agree to notify us if you desire to place these financial statements or our report thereon along with other information, such as a report by management or those charged with governance on operations, financial summaries or highlights, financial ratios, etc., on an electronic site. You recognize that we have no responsibility as auditors to review information contained in electronic sites. The City affirmatively notifies **BKD** that it places the reports on the City's [Denvergov.org](http://Denvergov.org) website and that bond offering documents are placed on websites in connection with the bond offering.

Any time you intend to reference our firm name in any manner in any published materials, including on an electronic site, you agree to provide us with draft materials for our review and approval before publishing or posting such information.

**BKD** is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in **BKD** with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

In accordance with the requirements of *Government Auditing Standards*, issued by the Comptroller General of the United States, we have attached hereto a copy of our latest peer review report for the year ended May 31, 2014 dated September 19, 2014.

### **HIPAA BUSINESS ASSOCIATE AGREEMENT**

We agree not to use or disclose Protected Health Information of your employees (hereinafter referred to as "PHI") obtained or produced in any form of media during the course of our work in a manner prohibited by HIPAA, as amended. We may use or disclose PHI for purposes of (a) performing our engagement, (b) management and administration of BKD, or (c) carrying out legal responsibilities of BKD. We will not further disclose information except as permitted or required by this contract or as required by law. When using or disclosing PHI in relation to this engagement, we will limit disclosures as required by HIPAA. We will not use PHI in any marketing activities in a manner that would violate HIPAA. We represent to you that we have implemented what we consider to be appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of your PHI as required for us as a business associate to comply with HIPAA.

With respect to your PHI, we will report to you any breach (as defined in 45 CFR 164.402), material security incident or use or disclosure not authorized by this agreement and, to the extent practical, assist you in mitigating any harmful effects caused by breaches, material security incidents or unauthorized uses or disclosures of which we become aware. To assist you in fulfilling your responsibility to notify impacted individuals and others of a breach involving unsecured PHI (as required under 45 CFR 164.400 et seq.), in this report we will identify to you, to the extent reasonably possible:

1. Each individual whose unsecured PHI was subject to the breach.
2. Any other available information you are required to include in your notification to such individual(s) or others under 45 CFR 164.404(c).

We agree that any material violation of these confidentiality provisions by us entitles you to terminate this engagement. Similarly, if we become aware of a violation of HIPAA by you that cannot be or is not timely cured, we may be obligated to terminate this engagement.

BKD agrees to:

1. Upon their request, make available to the Secretary of Health and Human Services (HHS) our internal practices and books and records relating to the use and disclosure of PHI for purposes of determining your compliance with the Security and Privacy Rule, subject to any applicable legal privileges.
2. Make available information necessary for you to make an accounting of disclosures of PHI about an individual.

3. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to respond to requests by individuals for access to PHI that is not in your possession but is considered part of a Designated Record Set.
4. Upon receipt of a written request from you, incorporate any amendments or corrections to PHI contained in our workpapers in accordance with the Security and Privacy Rule to the extent such PHI is considered part of a Designated Record Set.

For purposes of this agreement, the term "Security and Privacy Rule" refers to the final rules published to implement the Administrative Simplification provisions of the *Health Insurance Portability and Accountability Act of 1996*, specifically 45 CFR Parts 160 and 164. The terms "Protected Health Information" and "Designated Record Set" have the same meaning as defined in the Security and Privacy Rule.

At the conclusion or termination of this engagement, any PHI retained by us will be subject to the same safeguards as for active engagements.

We will obtain from any agents, including subcontractors, to whom we provide PHI received from you, or created or received by us on behalf of you, an agreement to the same restrictions and conditions that apply to us with respect to such PHI.

To the extent that any relevant provision of HIPAA is eliminated or held to be invalid by a court of competent jurisdiction, the corresponding portion of this agreement shall be deemed of no force and effect for any purpose. To the extent that any relevant provision of HIPAA is materially amended in a manner that changes the obligations of business associates or covered entities that are embodied in term(s) of this engagement, the Parties agree to negotiate in good faith appropriate amendment(s) to this engagement to give effect to such revised obligations. In addition, the terms of this engagement should be construed in light of any interpretation and/or guidance on HIPAA issued by HHS from time to time.

**Exhibit B  
Fees Detail**

Report to Be Delivered	Fees – December 31, 2016	Fees – December 31, 2017	Fees – December 31, 2018
CAFR	\$550,000	\$564,600	\$580,500
Single Audit	\$91,500	\$155,000	\$157,500
Denver Airport System and Passenger Facility Charges	\$150,300	\$154,600	\$157,000
Total	\$791,800	\$874,200	\$895,000

The Single Audit hours and fees for 2016 are based on six major programs to be audited. The single audit fees for 2017 and 2018 are based on an estimated 10 major programs to be audited. Contractor will bill only for the number of Single Audit programs audited. Additional programs will be billed based on the average per program cost during the applicable year.

**EXHIBIT C**

(exhibit follows)





