

BANK SOLICITOR AGREEMENT

February 11, 2022

City of Commerce City
7887 East 60th Avenue
Commerce City, CO 80022

Re: 2022 Subordinate Sales and Use Tax Revenue Loan (Loan)

Ladies and Gentlemen:

RBC Capital Markets, LLC (“RBC CM” or “Bank Solicitor”) offers to enter into this Bank Solicitor Agreement (the “Agreement”) with City of Commerce City (the “Borrower” or “you”), which, upon your acceptance of this offer, shall be binding upon both the Borrower and the Bank Solicitor. This offer is made subject to your acceptance of this Agreement, if not so accepted, will be subject to withdrawal by the Bank Solicitor upon notice delivered to your office at any time prior to your acceptance hereof. The above-captioned Bank Loan (the “Bank Loan”) is duly authorized pursuant to the Resolution. Unless otherwise indicated, each capitalized term contained herein shall have the meaning assigned to it in the Resolution.

The Borrower acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm’s length, commercial transaction between the Borrower and the Bank Solicitor in which the Bank Solicitor is not acting as a municipal advisor, financial advisor or fiduciary to the Borrower; (ii) the Bank Solicitor has not assumed any advisory or fiduciary responsibility to the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank Solicitor has provided other services or is currently providing other services to the Borrower on other matters); (iii) the only obligations the Bank Solicitor has to the Borrower with respect to the transaction contemplated hereby expressly are set forth in this Agreement; (iv) the Borrower has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate; and (v) the use of the term “Solicitor” or “Agent” with reference to this Agreement and the role of RBC CM is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such terms are used merely as a matter of market custom and intended to create or reflect only an independent contractor relationship between contracting parties and RBC CM acts as an independent broker-dealer and exercises its own independent judgment in connection with its rights and duties under this Agreement.

1. Upon the terms and conditions and upon the basis of the representations, warranties and covenants set forth herein, the Bank Solicitor hereby agrees to use its best efforts to locate a lender for all, but not less than all, of the Bank Loan on terms consistent with the Resolution. If a lender does enter into a Bank Loan on the Closing Date, the Borrower will pay a fee equal to \$2.50 per \$1,000 of the par amount to the Bank Solicitor on the Closing Date.

2. You represent and warrant to and agree with the Bank Solicitor (and hereby it shall be a condition of the obligation of the Bank Solicitor to perform under this Agreement) that you shall so represent and warrant as of the date the Bank Loan is made (such date referred to herein as the “Closing Date”) that:
 - (a) The Borrower is duly organized and validly existing under the laws of the State of Colorado (the “State”).
 - (b) The Borrower has complied, and reasonably expects, in all respects on the Closing Date to be in compliance with all of the provisions of applicable [State or other] law and Borrower documents as they pertain to such Bank Loan.
 - (c) The Borrower, prior to the acceptance hereof, has duly adopted the Resolution, and the Borrower has duly authorized and approved the execution and delivery of the applicable loan documents and this Agreement (collectively, the “Loan Documents”), as well as the performance of its obligations contained in the Loan Documents and the consummation by it of all other transactions contemplated hereby.
 - (d) The Borrower is not in breach of or default under any applicable law or administrative regulation of the State, any department, division, agency or instrumentality thereof, or of the United States or any applicable judgment or decree or any loan agreement, note, resolution, certificate, agreement or other instrument to which the Borrower is a party or is otherwise subject which breach or default would materially and adversely affect the Borrower or its ability to perform its duties and obligations under the Loan Documents; and the execution and delivery of this Agreement, the adoption of the Resolution, the execution of the Loan Documents and compliance with the provisions of each thereof will not conflict materially with or constitute a breach of or default under any applicable law or administrative regulation of the State or under any certificate, agreement, or other instrument to which the Borrower is a party or is otherwise subject which breach or default would materially and adversely affect the Borrower, its Loan Documents or its ability to perform its duties and obligations under the Loan Documents.
 - (e) All approvals, consents and orders of any governmental authority, board, agency or commission having jurisdiction that would constitute a condition precedent to the performance by the Borrower of its obligations hereunder and under the Loan Documents have been, or prior to the Closing Date will have been, obtained.
 - (f) No litigation is pending or, to the knowledge of the Borrower, threatened in any court in any way affecting the existence of the Borrower or the title of the members of the Borrower to their respective offices or seeking to restrain or to enjoin the execution or delivery of the Loan Documents, or the collection or pledge of any revenues pledged or to be pledged under the Loan Documents to pay the principal of and interest on the Bank Loan, or in any way contesting or affecting the validity or enforceability of the Bank Loan, the Resolution or this Agreement, or contesting the powers of the Borrower or its members with respect to the Bank Loan.
 - (g) The Borrower will apply the proceeds of the Bank Loan in accordance with the applicable terms of the Resolution and other applicable documents.
 - (h) The Borrower agrees to provide information to satisfy “Know Your Client,” “Anti-Money Laundering” and Terrorist Financing” rules and regulations, in each case, in accordance with the Bank Solicitor’s requirements.
 - (i) On the Closing Date, the Bank Solicitor shall receive a copy of each of the following documents, each dated the Closing Date:
 - (i) a certified copy of the Resolution;

- (ii) certified copies of the any supplemental resolutions;
- (iii) a certificate of an authorized officer of the Borrower that the Resolution & any supplements and this Agreement are in full force and effect;
- (iv) opinions of your counsel, Butler Snow LLP (“Borrower Counsel”), dated the Closing Date in form and substance satisfactory to the Bank Solicitor;
- (v) a certificate, dated as of the Closing Date and signed by an authorized officer of the Borrower, to the effect that (A) the representations, warranties and covenants of the Borrower contained herein are true and correct in all material respects on and as of the Closing Date, with the same effect as if made on the date of the delivery of the Loan Documents by the Borrower; (B) no litigation is pending or, to its knowledge, threatened in any court in any way affecting the existence of the Borrower or the titles of its officers or directors to their respective positions, or seeking to restrain or to enjoin the issuance, sale or delivery of the Loan Documents, or the collection of any revenues or assets of the Borrower pledged or to be pledged to pay the principal and interest on the Bank Loan, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Loan Documents, the Resolution or this Agreement, or contesting the powers of the Borrower or its authority with respect to the Bank Loan, the Resolution or this Agreement (but in lieu of or in conjunction with such certificate, the Bank Solicitor may, in its sole discretion, accept certificates or opinions of Counsel to the Borrower (as hereinafter defined), acceptable to the Bank Solicitor, that in the opinion of such counsel the issues raised in any such pending or threatened litigation are without substance or that the contentions of all plaintiffs therein are without merit); and (C) the Borrower has complied in all material respects with the Resolution and the terms of the Loan Documents and satisfied all material conditions on its part to be performed or satisfied at or prior to the delivery of the Loan Documents;
- (vi) a certificate of the Trustee under the Resolution as to the delivery of the Bank Loan and a certificate of the Borrower as to the receipt of payment therefore;
- (vii) a lender letter from the lender in form and substance satisfactory to the Bank Solicitor;
- (viii) consents from as necessary to the execution of the Resolution; and
- (ix) such additional certificates, instruments or opinions as Borrower Counsel, the Borrower or the Bank Solicitor may deem necessary or desirable.

All certificates, instruments, opinions and documents referred to above and any resolutions shall be in form and substance satisfactory to Borrower Counsel, the Borrower and the Bank Solicitor.

If the obligations of the Bank Solicitor shall be terminated for any reason permitted hereby, neither the Bank Solicitor nor the Borrower shall be under further obligation hereunder.

3. At or prior to 5:00 pm, on March 29, 2022, you will deliver to, or at the direction of, the lender, the Loan Documents duly executed, together with the other documents hereinabove mentioned, upon funding of the Bank Loan hereof by wire and in immediately available funds. Delivery as aforesaid shall be made in Colorado, as shall have been mutually agreed upon and such payment shall be made simultaneously therewith. This payment and delivery is herein called the “Closing.”
4. Unless otherwise set forth herein, the representations and agreements in this Agreement shall survive the delivery of the Bank Loan hereunder.

5. The Bank Solicitor's obligation hereunder to use its best efforts to place the Bank Loan shall be subject to the performance by you of your obligations hereunder in all material respects at or prior to the Closing and the accuracy in all material respects of your representations and warranties contained herein and shall also be subject to the following conditions:
 - (a) At the time of the Closing, the Resolution and all related documents of the Borrower with respect to the issuance of the Bank Loan shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to by the undersigned.
 - (b) The undersigned may terminate this Agreement by notification in writing to you if at any time subsequent to the date hereof and at or prior to the Closing: (i) in the Congress of the United States, legislation shall be enacted or a bill shall be favorably reported out of committee of either house, or a decision by a court of the United States shall be rendered, or a ruling, regulation to the effect that obligations of the Borrower or of any similar body are not exempt from federal income or state income tax as contemplated as of the date of this Agreement; (ii) there shall have occurred any materially adverse change in the affairs or financial condition of the Borrower; or (iii) the Bank Loan shall be prohibited by any applicable law, governmental authority, board, agency or commission.
 - (c) The Borrower shall have arranged for payment of the Bank Solicitor's fee at the time of Closing.
 - (d) You shall perform or have performed in all material respects at or prior to the Closing all of your obligations required under or specified in this Agreement and the Resolution to be performed at or prior to the Closing.
6. You shall pay, solely from the proceeds of the sale of the Bank Loan, upon or promptly after the Closing:
 - (a) the fees and disbursements of Borrower Counsel and of any other counsel or consultants retained by you. The Bank Solicitor shall pay the fees and disbursements of any counsel to the Bank Solicitor and the Bank Solicitor's own out-of-pocket expenses. The Borrower shall be under no obligation to pay any expenses incident to the performance of the obligations of the Bank Solicitor hereunder.
7. You agree and understand that this Agreement is a contract for services and waive any claims you may have that you are immune from suit by virtue of any law or claim for any matter arising from or relating to this Agreement. You further agree, to the extent permissible by law, to indemnify and hold RBC CM harmless against any losses, claims, damages or liabilities to which we may become subject, including reasonable and necessary legal fees, in so far as such losses, claims, damages or liabilities arise out of or relate to the transaction contemplated herein. Such indemnity shall include indemnity for claims that may allege or involved negligence of RBC CM, but shall not include claims involving willful misconduct or gross negligence of RBC CM.
8. This Agreement may be terminated with or without cause by either party, upon five (5) business days prior written notice to the other party of its intention to terminate. Any such termination, however, shall not affect the obligations of the Borrower under Section 7 hereof or the respective representations, warranties, agreements, covenants, rights or responsibilities of the parties made or arising prior to the termination of this Agreement.
9. The agreements and all representations and warranties herein set forth have been and are made for the benefit of the Bank Solicitor and the Borrower, and no other person shall acquire or have any right under or by virtue of this Agreement.
10. This Agreement shall become effective upon the execution of the acceptance hereof by an authorized officer of the Borrower and shall be valid and enforceable as of the time of such acceptance.

RBC CAPITAL MARKETS, LLC



By
Name David Bell
Title Managing Director
Date February 11, 2022

ACCEPTANCE

ACCEPTED this _____ day of _____, 2022

By _____
Name _____
Title _____