



## Agenda Memorandum

Agenda Item – {{section.number}}.A.

City Council Meeting  
August 14, 2023



### Strategic Priority 1: Preparedness and Resilience

Build a system of intentional support for residents, businesses and the environment that mitigates risks and proactively seeks out ways to ensure the community not only endures, but thrives.

**Subject:** Retaining Special Legal Counsel for Financing a Replacement Municipal Court Facility

**Prepared By:** Dave Frankel, City Attorney  
Robert Byerhof, Treasury Manager

### Recommended City Council Action:

Authorize the City Manager to execute an agreement for continuing disclosure counsel with Kutak Rock, LLP for a fee not to exceed \$57,500 in connection with the issuance of tax-exempt Certificates of Participation (COPs) by the City of Westminster for financing a Replacement Municipal Court facility.

### Summary Statement:

- Retaining special legal counsel is subject to approval by City Council in accordance with the Westminster City Charter.
- Representatives from Kutak Rock, LLP have provided legal counsel on a number of previous City financings, including those for the Water and Wastewater Utility Enterprise, Sales and Use Tax Revenue Bonds, Park, Open Space, and Trails (POST) Bonds, and various Certificates of Participation (COPs).

### Fiscal Impact:

\$57,500 in expenditures.

### Source of Funds:

Certificate of Participation (COPs) proceeds.

**Policy Issue(s):**

Should the City retain special legal counsel for the anticipated issuance of Certificates of Participation (COPs), for the financing of a replacement municipal court building?

**Alternative(s):**

City Council could direct Staff not to retain special counsel for this transaction. This is not recommended because the tax-exempt Certificate of Participation (COPs) financing cannot be closed without an opinion of special counsel.

**Background Information:**

On May 22, 2023, City Council approved a reimbursement resolution and further directed staff to retain special legal counsel for the issuance of COPs. The City must complete certain documents related to the financing which requires special legal services to prepare and disseminate. Continuing disclosure counsel ensures the City complies with regulatory requirements that necessitate a Preliminary Official Statement and Final Official Statement which detail the project, set forth the City's profile, and financial information providing investors critical information. The proposed external legal fees would be paid from the COP proceeds at closing.

Federal securities law requires the City to issue an Official Statement in connection with this financing. Mr. Tom Peltz is a partner in the law firm of Kutak Rock, LLP and is a recognized expert in disclosure matters under federal securities law. The firm has acted in this capacity on numerous other bond issues and financings, and Mr. Peltz is closely familiar with the City's financial position, the general economic condition of the City, the City's detailed financial information, and other material facts related to the City's preparation of a satisfactory Official Statement in connection with this financing.

The fees quoted by Kutak Rock are reasonable and consistent with past financings, and the familiarity of the legal team with the City and its financial and legal documents is critical to a successful debt issuance. The efficiencies in retaining Kutak Rock as the City's disclosure counsel are significant and will help ensure an expeditious closing of the financing.

Obtaining bond counsel services in connection with the anticipated issuance of tax-exempt Certificates of Participation (COPS) supports the City's Strategic Goal of Preparedness and Resilience, as this anticipated financing requires the services of external legal services to help the City issue COPS.

Respectfully Submitted,

*Mark A Freitag*

Mark A. Freitag  
City Manager

**Attachments:**

Attachment 1 – Kutak Rock Engagement Letter 23 COPS

Attachment 2 – Kutak Rock LLP – 2023 Legal Services Contract – COPS (Municipal Court)