

REQUEST FOR PROPOSAL

FOR

ON CALL

MATERIAL INSPECTION AND TESTING

PROFESSIONAL SERVICES

FOR

THE DENVER JUSTICE CENTER PROJECT

Department of Public Works
Project Identification Numbers
Post Office/Parking Garage PF5005_200
Courthouse PF50005_300
Detention Center PF50005_400

Contract Control Number: CE_ OC64035

Date of Issuance: August 16, 2006

CITY AND COUNTY OF DENVER

Request for proposal for
Material Inspection and Testing Specialist for
The Justice Center Project
Contract Control Number: CE_ OC64035

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CITY AND COUNTY OF DENVER

Request for Proposal for
Material Inspection and Testing Specialist for
The Justice Center Project
CE_ OC64035

ADVERTISEMENT / NOTICE OF INVITATION

A Request for Proposal for on call Material Inspection and Testing Specialist for the Justice Center Project will be available on August 16, 2006. Responses and submittals are due and will be received no later than 4:00 P.M. MDT on September 6, 2006.

Late submittals or submittals delivered to the incorrect location may not be accepted.

All responses and submittals must be delivered to:

**The Department of Public Works
201 W. Colfax Ave.
Denver, CO 80202
Fifth Floor Reception Counter
Attention: Dick Gillet**

Hard copy will be available at the above location on the first day of publication at no cost. The document may also be downloaded from the DenverGov Web site www.denvergov.org/justice_center Additional background material is also available at the website. All companies in possession of the document are responsible to register via email to dick.gillet@ci.denver.co.us to assure the receipt of any postponements, addenda, or other notices.

General Description of Services and Project:

Denver seeks to retain the services of more than one qualified Material Inspection and Testing Specialist to provide the following services including but not limited to: Soils, caissons, asphalt, concrete, masonry, steel, fireproofing, mechanical, electrical, and clerical support services. Proposers must have experience in projects over \$100,000,000 and with LEED commissioning.

Small Business Enterprise Participation:

The City recognizes that there is value in engaging small businesses and has put a process in place by City Ordinance to mandate their involvement. **The Small Business Enterprise goal for this solicitation is 20%.** Please contact the DSBO office for compliance details.

General Information:

This solicitation is issued by Dick Gillet, Justice Center Program Manager, as the designee of the Manager of Public Works, pursuant to the authority vested in the Manager of Public Works by the Charter of the City and County of Denver. As the City's best interests may appear, the Program Manager reserves the right to terminate, suspend or modify this selection process at any time; reject any or all submittals at any time; and waive any informalities, irregularities, or omissions in submittals at any time.

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Published In: The Daily Journal

CITY AND COUNTY OF DENVER

REQUEST FOR PROPOSAL

Material Inspection and Testing Specialist Justice Center Project

Section I – Introduction

A. Intent:

The following Request for Proposal (the “RFP”) issued by the City and County of Denver Department of Public Works seeks to retain the services of a highly qualified Material Inspection and Testing Specialist experienced in projects over \$100,000,000.00 and with experience in material testing and inspection services in support of a Leadership in Energy Efficient Design (“LEED”) rating to act as a consultant for the Denver Justice Center (“the Project”). The project objective is to complete the Denver Justice Center on time and under budget. All three of the components of the downtown campus will be LEED certified at a minimum.

All background project materials are posted on the Justice Center website at www.denvergov.org/justice_center (“Website”). The materials include:

1. Justice Center Design and Development Standards and Guidelines
2. Justice Center Task Force Report – Report from community advisory task force
3. Civic Center District Master Plan
4. Urban Land Institute Report

B. The Denver Justice Center Project:

The Denver Justice Center Project is the first significant capital investment in Denver’s criminal justice system since the completion of the City and County Building in 1931. On May 3rd, 2005, Denver voters authorized \$378 million for design and construction of a Courthouse, Detention Facility, Post Office Building and renovations at the County Jail. The value of the construction portion is approximately \$230,000,000. Commissioning Consultant services for the renovation of the County Jail are not being sought at this time.

The Project nominally consists of 320,150 gross square foot (“gsf”) Courthouse with 35 courtrooms, a 430,864 gsf Detention Facility with 1,500 beds and a 277,000 gsf Post Office Building with approximately 600 parking spaces. The Courthouse and Detention Facility will be connected via an underground tunnel. The Project is scheduled to be completed by the last quarter of 2009. After the completion of the downtown campus, renovations will begin at the County Jail at Smith Road.

The Project site is in the heart of Denver’s historic Civic Center District. The Site is generally bound by West Colfax Avenue and West 14th Avenue and Fox Street and Delaware Street; along with the north portion of the block bound by West 14th Avenue and West 13th Avenue and Elati Street and Delaware Street.

COURTHOUSE

The Denver Justice Center Courthouse Building is planned to house the County and District criminal and juvenile courts. The new building is programmed with thirty-five (35) courtrooms and will provide space for related users including District Attorney, City Attorney, Clerks of the Courts, Public Defender, Probation Offices, Jury Assembly, Jury Commissioner, and temporary inmate

holding for both adults and juveniles. In addition there will be parking for thirty-seven (37) judges and magistrates below grade. The Project shall include a secured underground tunnel connecting the Courthouse Building to the new Detention Facility.

The Project will include landscaping, pedestrian circulation and new streetscape on all four sides of the building. It will be constructed on the West block of the campus between West 14th Ave. and West Colfax Ave. and between Fox and Elati Streets. This site is currently occupied by the United States Postal Service ("USPS"), an auto mechanic shop, a vacant restaurant and open surface parking lots.

Construction of the Courthouse is constrained by the relocation/evacuation of the United States Postal Service into the planned Post Office Building. The Post Office Building will be constructed no later than July 1, 2007 on the north portion of the block bound by West 14th Avenue and West 13th Avenue and Delaware and Elati streets. The Courthouse Project is scheduled for occupancy by the end of 2009.

DETENTION CENTER

The Denver Justice Center Detention Facility Building will provide a fully functional, multi-custody jail facility for pre-sentenced individuals. The project will also provide administrative areas for the Denver Sheriff's Department, medical staff and two County Arraignment Courts with associated support facilities for all departments. The project shall include a secur underground tunnel connecting the Detention Facility to the new Courthouse Building. The housing units are intended to be divided into general population, special management and medical areas with food service, laundry and support functions. The Intake/Booking/Release area shall have adequate law enforcement vehicular access and shall be capable of processing male and female individuals, with temporary holding cells and medical evaluation areas. The project will be constructed between West 14th Ave and West Colfax Ave. and between Delaware and Elati Streets. The site is currently occupied by the Rocky Mountain News building.

The design concept for the project utilizes the ground and basement levels for the vehicular sally port, intake, booking, release, arraignment courts, public visitation, food service, laundry, mechanical systems and electrical systems. The upper floors shall accommodate the housing units, Sheriff's Department administration and medical administration.

Construction of the Detention Facility is constrained by the evacuation of the Rocky Mountain News building. Evacuation is scheduled for the fall of 2006, but no later than January 1, 2007. The hazardous material removal and building demolition are scheduled to begin immediately after that date. The hazardous material will be performed under a separate contract to the City and the demolition will be part of the general contractor's scope of work. The Project must be ready for occupancy by the end of 2009.

POST OFFICE/PARKING GARAGE

The Denver Justice Center Post Office and Parking Garage Building will provide parking for the public, Denver Public Schools, Denver Sheriff's Department, a United States Post Office at the street level and general retail. The project will be constructed on the south side of West 14th Ave. between Delaware and Elati Streets.

The design concept for the project utilizes the entire ground floor for a U.S. Post Office and other retail uses. This floor accommodates the "retail" operation of the Post Office with the counter stations, postal store, and private post office boxes as well as all bulk mail receiving and sorting by the mail carriers. The total finished interior floor area for the Post Office is approximately 18,000

square feet. The ground floor also includes two truck loading bays and 29 parking spaces for mail carrier delivery vans. In total there are approximately 630 parking spaces in the garage. In addition, plans call for approximately 9,000 square feet of retail core and shell provided for general use.

Construction of the Courthouse and the Detention Facility on directly adjacent sites is constrained by the present Post Office. The Detention Facility will be constructed on the site currently occupied by the Rocky Mountain News Building and the Courthouse will be constructed on the block to the immediate west. Prior to the construction of the Courthouse, the existing Post Office at 1421 Gene Amole Way must be relocated. Therefore, completion of the Post Office Building is critical for the start and completion of the remaining components of the downtown Justice Center Project. The timely completion of the Project is essential.

C. Sustainable Design:

The City and County of Denver is committed to pursuing environmentally sustainable and energy efficient design in all new construction projects. Achieving certification from the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") program will allow the City to track, measure and publicly demonstrate the value of green building design. Planning for the life-cycle cost of our facilities, projected utility costs, long-term operational costs, maintenance requirements and worker productivity are critical to the City's financial health. Green building design is both financially sound and helps support Denver's quality of life for future generations.

D. Project Delivery and Construction Methodology:

Because of the City's commitment to providing a landmark Project in keeping with the standard of urban design excellence embodied by the historic Civic Center and given the unique challenges associated with each of the Project components, the City intends to separate the Downtown portion of the Project into three (3) discrete components, the Detention Facility, the Courthouse and the Post Office Building, for purposes of Project delivery.

The City intends to employ a Construction Manager/General Contractor ("CM/GC") project delivery methodology for each of the Project components. The City anticipates engaging experienced and highly qualified CM/GC contractors through separate solicitations to provide preconstruction and construction services for each component. The design team and the CM/GC contractor for each component, along with the Master Urban Design Architect (the "MUDA"), the Program Manager and the City, will constitute the project team responsible for delivering each component in a timely, cost effective and high quality manner.

Jacobs is the Program Manager and will oversee, coordinate and manage the delivery of the entire Project, comprised of the three discrete components, on behalf of the City. The Program Manager will provide leadership and manage the project team formed to complete each project.

Section 2 – Selection Process

A. Request for Proposal:

The Selection Committee shall review each proposal submittal received in response to this RFP. Based on that review and evaluation of each submittal in accordance with the criteria set forth in Section 9, the Selection Committee may rank and recommend more than one qualified firms (the "Short List") to the Manager of Public Works for his final consideration.

The selection committee will be comprised of the Mayor's Office, Program Manager and the Department of Public Works. The selection committee may also consult additional sources for subject matter expertise.

If requested by the Manager, and prior to submitting a final ranking, the Selection Committee may interview the Short Listed firms prior to making its final ranking recommendation to the Manager. If interviews are conducted, the firms selected to interview will be notified of the time, place and requirements for the interview stage.

B. Selection Schedule:

RFP Available	August 16, 2006
Deadline for Submitting Questions	1:00 pm, August 25, 2006
Response to Questions	3:00 pm, August 29, 2006
Responses to RFP due	4:00 pm, September 6, 2006
Notify Selected Firm.....	TBD
Final Scope and Fee due.....	TBD
Contract Execution.....	TBD
Notice to Proceed	TBD

Section 3 – Description of Services

A. Material Inspection and Testing Scope of Work:

Work contemplated under this RFP, is described as providing complete Inspection and Testing Services, for the projects listed, including but not limited to the following major areas: Soils, caissons, asphalt, concrete, masonry, steel, fireproofing, mechanical, electrical, and clerical support services.:

Section 4 – Authority and Administration

A. RFP Authority:

In accordance with the City Charter, the City’s Manager of Public Works is charged with the management and control of public improvement projects. By approval of the 2005 Justice Center Bond Issue, the Manager is authorized to select and engage such consultants as may be required to complete the Project. It is the City’s expectation that this RFP and selection process will result in the selection of a firm or team to be retained in a professional capacity for the development and execution of the anticipated professional services described herein.

This RFP solicitation is issued by the Manager of Public Works pursuant to the authority vested in the Manager by the Charter of the City and County of Denver. As its best interests may appear, the Manager of Public Works reserves the right to terminate, modify or suspend the process, reject any or all submittals, modify the terms and conditions of this selection process and/or waive informalities in any submission.

B. RFP Administration:

The Manager hereby designates the City Engineer as the Manager’s designated representative for the purposes of administering all aspects of this selection process. The City Engineer will be responsible for coordination of the procedures and rules specified in this RFP, managing this process and all other matters related to this process. In conducting the process in a fair and equitable manner, the City Engineer will serve as the primary intermediary between the project management professionals, the City, and the members of the Selection Committee. All inquiries and questions regarding this RFP shall be directed to Dick Gillet in writing via email at dick.gillet@ci.denver.co.us on behalf of the City Engineer. Any Proposer that contacts any member of the Selection Committee other than the designated contact from the date of issuance of the RFP and prior to the completion of the selection process may be disqualified from further participation in the selection process, at the Manager’s sole discretion.

Section 5 – General Information

A. Verification of Information:

Proposers are hereby notified that the City will rely on the accuracy and completeness of all information provided in making its selection. As such, Proposers are urged to carefully review all information provided to ensure the clarity, accuracy and completeness of such information. As the City deems necessary and appropriate in its sole discretion, the City reserves the right to make any inquiries or other follow up required to verify the information provided.

B. Disclosure of Information:

All submissions and other materials provided or produced pursuant to this RFP may be subject to the Colorado Open Records Law, C.R.S. 24-72-201, ET. seq. As such, Proposers are urged to review these disclosure requirements and any exceptions to disclosure of information furnished by another party and, prior to submission to the City, appropriately identify materials which are not subject to disclosure. In the event of a request to the City for disclosure of such information, the City shall advise the Proposer of such request to give the Proposer an opportunity to object to the disclosure of designated confidential materials furnished to the City.

C. Discrimination in Employment:

In connection with the performance of work on this project, the selected architect 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, gender variance, age, military status, sexual orientation, marital status, or physical or mental disability; and the contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

D. Applicable Laws:

This selection process and the performance of any selected Proposer shall be subject to, governed by and construed in accordance with the laws of the State of Colorado and the Charter, Revised Municipal Code, Rules, Regulations, written policies and Executive Orders of the City and County of Denver, as the same may be amended from time to time.

E. Insurance:

The City has purchased a Project Specific Liability Policy that will apply to the material inspection and testing scope of work. Insurance requirements are addressed in the attached sample contract. (Attachment 5)

F. Addenda:

As the City may require, addenda may be issued to supplement this RFP. All Proposers in receipt of the RFP must register with Dick Gillet at dick.gillet@ci.denver.co.us for receipt of such addenda. The list of registered participants will be used to issue all communications regarding this RFP, including formal addenda and date changes. It shall be conclusively presumed that each Proposer submitting a response has affirmatively registered with the City for this Project and has received all subsequent communications relating to the Project. Proposers will be responsible for all such information issued by this method.

G. Questions and Communication:

All questions must be submitted in writing to Dick Gillet at dick.gillet@ci.denver.co.us The deadline for submitting questions is 1:00 pm August 18, 2006. A response to the questions will be provided to all registered RFP holders no later than 3:00 pm August 23, 2006.

Section 6 – SBE Goal and Program Requirements

The spirit of the SBE ordinance is to facilitate the growth of small firms by involving them in meaningful work on City funded projects. A successful program relies on large firms providing meaningful work which allows smaller firms to learn from their experiences and grow their business. The City values small business involvement as well as the involvement of diverse businesses from across Denver.

Professional services contracts made and entered into by the City and County of Denver are subject to Article VII, Division I of Chapter 28 of the Denver Revised Municipal Code, (D.R.M.C.) (the “Ordinance”) and the Small Business Enterprise Program’s Rules and Regulations adopted by the Director of the Small Business Opportunity Division (SBOD). Article VII, Division 1 of Chapter 28 D.R.M.C. provides for the adoption of a Small Business Enterprise Goals Program to be administered by SBOD.

SBE Goal: 20%

Proposers are urged to carefully consider opportunities for SBE participation in formulating each submission required hereunder in order to facilitate SBE participation on the project. A directory of companies certified by the City and County of Denver as Small Business Enterprises may be obtained from MOCC, or by review of the agency Web site at www.denvergov.org/mocc and copies of the Small Business Enterprise Goals Program Ordinance and its accompanying Rules and Regulations are available for the use and review of proposers from DSBO.

Section 7 – Contribution Disclosure Requirements

Section 20-69, The Denver Revised Municipal Code (D.R.M.C.) requires the disclosure of the name of each officer, director, shareholder who owns or controls 5% or more of the business entity, principal, and owner of each bidding or proposing entity, AND either (1) disclosure of the names of the spouses of those individuals and the names of their children under the age of eighteen (18), or (2) a statement in lieu of the disclosure of the names of the spouses and children as set forth below in the “*Certified Statement in Lieu of Disclosure*”. Refer to Attachment 1. The names of officers, directors, 5% shareholders, principals and owners must be disclosed in either event. Required disclosures also include the names of any subcontractor/supplier receiving more than \$100,000.00 of work and the names of any unions with which the bidder/Proposer has a collective bargaining agreement.

Section 8 – Submittal Requirements

The printed Proposal Submittal is intended to present the opportunity to demonstrate your ability to perform the tasks required and to present the innovative techniques, processes, methods and approach that the firm will bring to meet the program goal.

The printed response to the RFP submission is not intended to be an expensive or elaborate document. It should be well composed for simplicity and ease of understanding. Eight (8) copies of the Response to the RFP shall be submitted.

Please include the following information in the submission of the printed Response to the RFP:

Part 1 Letter of Introduction:

Clearly indicate the single contact, mailing address, telephone and facsimile numbers. Indicate the specific nature and relationship of any formal association or joint venture of the Proposer/Respondent. (Attachment 1)

Part 2 Executive Summary:

- a. Identification of the testing company including address, telephone number and the date firm(s) and joint venture or association was formed. Include business structure (such as corporation, partnership, etc.).
- b. Areas of specialization of the firm.
- c. Size of firm and number of local employees.

Part 3 Fee Proposal:

Provide the following information per the referenced attachments:

- a. Schedule of testing billing rates. (Attachment 2)
- b. Schedule of billing rates for fees and services. (Attachment 3)
- c. Schedule of reimbursable expenses. (Attachment 4)

Part 4 Resource Scheduling, Team Availability and Responsiveness:

Provide a discussion of how the team will respond to and approach:

- a. Normal requests for testing and inspection.
- b. Emergency unscheduled requests for testing and inspection services.
- c. Discovering and resolving issues that may arise during the course of construction projects, especially as it relates to quality control concerns.

Part 5 Team Organization:

- a. **Organization Chart:** Provide an organization chart for the specific project team indicating principals, project managers, site and support staff, consultants, etc. Give a brief description of the roles of the personnel on the team listing their office location.
- b. **Experience and Time Commitment:** Provide resumes of the Project Team showing relevant experience, education and level of commitment to this project.

Part 6 References:

List three (3) references for services performed on similar projects in the last seven (7) years using staff proposed for this project. Show names of organizations, and the names and phone numbers of persons who can be contacted regarding the projects.

Section 9 – Evaluation Criteria

A. Evaluation Criteria:

RFP submissions shall be evaluated according to the following general guidelines and other relevant considerations as determined by the Selection Committee:

1. Previous work Experience.
2. Written presentation of the proposal.
3. Response capability.
4. Overall proposal, including supplementary explanations, descriptions and documents.
5. Relevant experience of proposed personnel and staffing plan.
6. Fees.

ATTACHMENT 1

CITY AND COUNTY OF DENVER
DEPARTMENT OF PUBLIC WORKS

BIDDER/CONSULTANT/VENDOR/PROPOSER DISCLOSURE

Bidding Entity's/Proposer's Name

Date this form was completed

Address

() _____
Telephone Number

City, State, Zip Code

Name of Officer/Owner completing this Form

1. Section 20-69 of the Denver Revised Municipal Code provides that the public interest is best served by maximum disclosure of political contributions made to candidates seeking election to City office by persons transacting business with the City and County of Denver. This Disclosure Form was devised to insure that City Bidder/Consultant/Vendor/Proposers comply with all applicable requirements of Section 20-69, D.R.M.C.

2. Complete each applicable Section of this Form in accordance with the following instructions and return it to the appropriate City official as directed.

3. If your business entity has previously submitted a Form **and** the information provided in this previously submitted Form **has not changed**, you need only complete Section 6 and return the Form.

4. If your business entity has not previously submitted a Form or any of the information contained in a previously submitted Form **has changed**, you must identify in Section 1 the **name** of **each** of the following for your business entity: (a) any director, (b) any officer, (c) any principal, (d) any owner and (e) any shareholder who owns or controls 5% or more of your entity.

5. If you are required to complete Section 1, you must also **EITHER**:

(A) Identify in Section 2, for each person listed in Section 1, that person's spouse, if any, and any children of that person, under the age of eighteen (18);

OR

(B) Identify in Section 3, any person listed in Section 1 and any spouse or age eighteen (18) or under child of any person listed in Section 1 that made a CONTRIBUTION, as defined in D.R.M.C. 15-32, to any CANDIDATE, as also defined in D.R.M.C. 15-32, during the last five (5) years,

AND

Certify in Section 4 that, except as disclosed in Section 3, no other person listed in Section 1 or any spouse or child under the age of eighteen (18) of any person listed in Section 1 made a contribution to any candidate, as these terms are defined in D.R.M.C. 15-32, during the last five (5) years.

6. And finally, if your bid/contract/purchase order/proposal includes subcontractors, subconsultants or suppliers receiving **more than** \$100,000.00 for any work performed, materials provided or services rendered **or** your business entity has a collective bargaining agreement with any union, you must identify each such subconsultant/supplier and each such union in Section 5.

SECTION 1. MUST BE FILLED OUT BY ALL BIDDER/PROPOSERS/CONSULTANT/VENDORS:

ATTACHMENT 1

CITY AND COUNTY OF DENVER
DEPARTMENT OF PUBLIC WORKS

Identify below each individual having the noted relationship with the business entity listed above. Show appropriate letter in the box to the left. A = Officer, B = Director, C = Principal, D = Owner, E = Controller of 5% or more of the stock. If more than one category applies, show in second box.

- 1. [][] _____ 9. [][] _____
2. [][] _____ 10. [][] _____
3. [][] _____ 11. [][] _____
4. [][] _____ 12. [][] _____
5. [][] _____ 13. [][] _____
6. [][] _____ 14. [][] _____
7. [][] _____ 15. [][] _____
8. [][] _____ 16. [][] _____

EITHER FILL OUT SECTION 2 OR SECTION 3 AND SECTION 4 IF APPLICABLE.

SECTION 2. Identify below each individual that is the spouse or a child under the age of eighteen (18) of any individual listed in Section 1 above. Use the first box to designate relationship as follows: F = Spouse, G = Child under 18. Use the second box to identify relationship to person listed in Section 1 above.

- 1. [][] _____ 9. [][] _____
2. [][] _____ 10. [][] _____
3. [][] _____ 11. [][] _____
4. [][] _____ 12. [][] _____
5. [][] _____ 13. [][] _____
6. [][] _____ 14. [][] _____
7. [][] _____ 15. [][] _____
8. [][] _____ 16. [][] _____

SECTION 3. DISCLOSURE OF CONTRIBUTION BY PERSONS LISTED IN SECTION 1 AND DISCLOSURE OF ANY SPOUSE OR CHILD UNDER THE AGE OF EIGHTEEN (18) OF A PERSON LISTED IN SECTION 1 WHO HAS MADE A CONTRIBUTION: List the names of any person listed in Section 1 who has made a contribution and the name of any spouse or child under the age of eighteen (18) of any person listed in Section 1 who has made a contribution during the last five (5) years.

- 1. [][] _____ 9. [][] _____
2. [][] _____ 10. [][] _____
3. [][] _____ 11. [][] _____
4. [][] _____ 12. [][] _____
5. [][] _____ 13. [][] _____
6. [][] _____ 14. [][] _____

ATTACHMENT 1

CITY AND COUNTY OF DENVER
DEPARTMENT OF PUBLIC WORKS

- 7. [] [] _____ 15. [] [] _____
8. [] [] _____ 16. [] [] _____

SECTION 4. BIDDER/CONSULTANT/VENDOR/PROPOSER CERTIFIED STATEMENT IN LIEU OF DISCLOSURE.

I hereby certify that, except as listed above, no officer, director, shareholder who owns or controls 5% or more of the business entity, principal, owner or his or her spouse or child under eighteen years of age has made a contribution, as defined in Section 15-32 D.R.M.C., or a contribution in kind, as defined at Section 15-32 D.R.M.C., to a candidate, as defined at Section 15-32 D.R.M.C., during the last five years.

Authorized Signature of Officer/Owner of Business entity

SECTION 5. DISCLOSURE OF SUBCONSULTANT, SUPPLIERS AND UNIONS. List the names of any unions with which your entity has a collective bargaining agreement and the names of any subcontractors or suppliers whose share of the amount to be paid by the City for this contract, purchase order or proposal will exceed One Hundred Thousand Dollars (\$100,000.00), identifying them in the box provided as follows: H = Subcontractor, I = Suppler, J = Union.

- 1. [] [] _____ 9. [] [] _____
2. [] [] _____ 10. [] [] _____
3. [] [] _____ 11. [] [] _____
4. [] [] _____ 12. [] [] _____
5. [] [] _____ 13. [] [] _____
6. [] [] _____ 14. [] [] _____
7. [] [] _____ 15. [] [] _____
8. [] [] _____ 16. [] [] _____

SECTION 6. CERTIFIED STATEMENT OF PREVIOUS DISCLOSURE.

I hereby certify that the information required to be disclosed by Section 20-69(d) D.R.M.C. [i.e. the information contained in responses to Section 1, 2, 3, 4, 5 and 6 of this Form] for _____

Name of Entity

has previously been furnished to the City and County of Denver and is on file with the City Clerk and further certify that such information is current as of the date indicated below.

Authorized Signature of Officer/Owner of Business Entity

Date

ATTACHMENT 2

CITY AND COUNTY OF DENVER
DEPARTMENT OF PUBLIC WORKS

SCHEDULE OF TESTING BILLING RATES

(Consultant may copy this page or modify it to conform to the services being offered.)

The unit costs for all tests listed below shall include all applicable costs for personnel, equipment, sample preparation and report preparation required to complete the test.

Soils Borings to 25' Depth - include costs for drilling rig and all personnel and equipment necessary for subsurface drilling to obtain samples for a Geotechnical Report. \$ _____/hr.

Soil Borings - 25' to 80' Depth - include costs for drilling rig and all personnel and equipment necessary for subsurface drilling to obtain samples for a Geotechnical Report. \$ _____/hr.

Test Pits - Up to 10' Deep - include all necessary personnel and equipment to excavate test pits for the purpose of soil classification or other subsurface investigation purposes. \$ _____/hr.

Soil Properties:

- Standard Proctor (ASTM D-698) \$ _____/ea.
- Modified Proctor (ASTM D-1557) \$ _____/ea.
- Swell / Consolidation (ASTM D-4546) \$ _____/ea.
- Moisture / Density (ASTM D-2216) \$ _____/ea.
- Gradation (ASTM D-422) \$ _____/ea.
- Atterberg Limits \$ _____/ea.
- Percent Less than No. 200 \$ _____/ea.

Asphalt Properties:

- Gradation \$ _____/ea.
- Specific Gravity and Absorption \$ _____/ea.
- Core Density / Lift Thickness \$ _____/ea.
- Extraction and Gradation \$ _____/ea.
- Theoretical Maximum Density \$ _____/ea.
- Marshall Properties / Hveem Properties \$ _____/ea.

Concrete:

Compressive Strength Testing of Cylinders \$ _____/cylinder

Concrete Coring - include costs for all equipment and personnel necessary to core existing concrete elements to obtain core samples used to determine compressive strength. \$ _____/hr.

SCHEDULE OF TESTS BILLING RATES

--- continued ---

Preparation and testing of concrete cores (set of 3). \$ _____/set

ATTACHMENT 2

CITY AND COUNTY OF DENVER
DEPARTMENT OF PUBLIC WORKS

Concrete floor flatness and levelness - include costs for all equipment and personnel to perform F_F and F_L tests for concrete floors. \$ _____/hr.

Masonry:

Prism Tests (ASTM C-1314) \$ _____/ea.
Grout Tests (ASTM C-1019) (set of 3) \$ _____/set.
Mortar Cube Tests (ASTM C-780) (set of 3) \$ _____/set.
Unit strength of brick or concrete masonry units \$ _____/ea.

Steel:

Magnetic Particle Testing of Welds - include all equipment necessary \$ _____/hr.
Ultrasound Testing of Welds - include all equipment necessary \$ _____/hr.
Bolt tensioning utilizing calibrated torque wrench \$ _____/hr.

Electrical:

KW Demand Test include all equipment necessary and final report (30 day test period). \$ _____/ea.
Testing for noise, transients and harmonics \$ _____/test
occurrence
Infrared testing of busses \$ _____/test
paint at buss

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SCHEDULE OF PERSONNEL BILLING RATES

(Consultant may copy this page or modify it to conform to the services being offered.)

PERSONNEL CLASSIFICATION	BILLING RATE PER HOUR
Principal	\$ _____
Project Manager	\$ _____
Project Engineer / Special Testing	\$ _____
Senior Technician	\$ _____
Technician III	\$ _____
Technician II	\$ _____
Technician I	\$ _____
Office / Field Engineer	\$ _____
Lead Inspector	\$ _____
Mechanical / Electrical Inspector	\$ _____
Word Processing / Clerical	\$ _____
other:	\$ _____
other:	\$ _____
other:	\$ _____
other:	\$ _____

Provide a listing of responsibilities for the Project Manager, Project Engineer/Special Testing, Senior Technician, Technician III, Technician II, and Technician I classifications. The responsibilities listed below shall be included in the listing. Proposer may supplement additional responsibilities as they apply to the Proposer's specific organizational structure and specific job descriptions for each classification. The hourly rates listed above shall include all applicable costs for personnel, equipment and report preparation for each of the responsibilities listed.

- Preparation of Geotechnical Reports.
- Visual classification of on site soils for acceptance of material for backfill or subgrade and/or relating to slope stability issues.
- Soils observation and inspection including compaction testing.
- Asphalt observation and inspection of asphalt placement including monitoring of temperatures and applicable installation quality control procedures.
- Caissons - inspection and depth of bearing strata, inspection of shear rings; inspection of casing operation, amount of water at base of caisson, and concrete placement techniques.
- Concrete Testing - include all personnel and equipment costs associated with slump, air content, and unit weight testing as well as casting of cylinders for compressive strength tests.
- Concrete - inspection of concrete batch plants.
- Concrete - inspection of steel reinforcing for slabs, columns, beams, etc.; verification of reinforcing steel property certification.
- Precast Concrete - Plant Quality Control inspection.
- Precast Concrete - testing and inspection of precast connections.
- Post-Tensioned Concrete - inspection and verification of Contractor's procedures, and monitoring of jacking operations.

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- Masonry - inspection of reinforcing dowels, reinforcing steel, joint reinforcing, ties and anchors.
- Masonry - inspection of masonry installation including observation of grout placement techniques.
- Steel - verification of mill certification, inspection of fit and alignment, visual inspection of welds, visual inspection of self indicating bolt tensioning devices, and inspection and testing of shear studs.
- Metal Decking - inspection of installation including deck attachment, side lap fastening, fit and alignment.
- Fireproofing - inspection and testing of fireproofing density and thickness.
- Mechanical - inspection and commissioning representative to monitor, analyze, and trouble shoot a Contractor's equipment and system commissioning operations. Individual must have experience with and knowledge of a variety of HVAC mechanical systems and controls.
- Mechanical - inspection of and testing ability to determine operating capacity and/or efficiency of existing equipment such as pumps, boilers, chillers, air handling equipment, etc.
- Mechanical - testing and balancing of HVAC diffusers and equipment.

The personnel classifications for **Office / Field Engineer, Lead Inspector, Mechanical / Electrical Inspector and Word Processing / Clerical** are positions that the City may require for this contract and shall be available for part-time or full-time work assignments of varying duration. Personnel for these positions must be approved in advance by Design and Construction Management Division through resume information and if necessary personal interview. Personnel for these positions must be available for jobsite duties within three working days of request for services, or at a time mutually agreed upon by the Proposer and Design and Construction Management Division. The job descriptions, responsibilities and qualifications for these positions are as follows:

Office / Field Engineer - provides assistance in the management of and maintains tracking logs for the Contractor's submittals and requests for information; works closely with Contractor's staff in establishing systematic methods of processing required information; maintains tracking logs for correspondence and change documents. Qualifications - bachelors degree in engineering or construction management and 2 - 4 years of construction office experience; familiarity with Primavera scheduling software and Microsoft Excel software is preferred; under general supervision, performs duties ranging from routine office practices to in depth research assignments; displays knowledge and abilities to evaluate, select and apply standard engineering techniques, procedures and criteria to meet basic engineering and construction requirements and concepts.

Lead Inspector - responsibilities include quality assurance and quality control by means of examination, observation or measurement to determine conformance of materials, supplies, components, systems, or structures to the contract documents and predetermined quality requirements; demonstrates general experience including: familiarity with inspection work; knowledge and skill pertinent to the product and process inspected; the ability to comprehend contract and engineering specifications; and familiarity with test methods and performance measurements. Qualifications - bachelors degree in engineering, science or related area and 5+ years experience in quality inspection, OR a high school diploma and 10 or more developmental years experience in quality inspection and/or testing of equivalent construction and

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installation activities. Participation in and certification to NICET level IV is preferred; under limited supervision, following standard policies and procedures; plans and performs a broad range of inspection duties.

Mechanical / Electrical Inspector - responsibility for both quality control and quality assurance by means of examination, observation or measurement, to determine the conformance of materials, equipment, components, parts, systems, or processes to the contract documents and predetermined quality requirements; demonstrates general experience in all aspects of mechanical and electrical fields including but not limited to: Plumbing system, hot and chilled water piping, ductwork installation, HVAC components and systems, DDC control systems, air handling equipment, pumps, fire sprinkler systems, fire alarm systems, main power feeds, main distribution centers, electrical power and lighting systems, security systems, closed circuit TV systems and lightning protection systems. Qualifications - bachelors degree in engineering, science or related area and 2 - 4 years experience in mechanical/electrical inspection, OR a high school diploma plus 4 - 6 years experience in mechanical/electrical inspection. Participation in and certification to NICET III is preferred; under general supervision, performs all duties of a quality inspector.

Word Processing / Clerical - responsible for providing support services in handling administrative and office details; types materials, establishes and maintains files; receives visitors; and receives and distributes mail and telephone calls. Qualifications - one-year work experience, high school diploma or equivalent preferred; works under close supervision; performs general duties within established guidelines; and has general knowledge of office practices and procedures.

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REIMBURSABLE EXPENSES

PROPOSER: _____

(Consultant may copy this page or modify it to conform to the services being offered.)

The additional expenses of the Consultant reimbursable by the City shall include:

- (1) Actual cost of transportation and living expenses of the Consultant's personnel traveling outside of the Denver Metropolitan area, when authorized in writing by the City under this Agreement, and subject to City regulations and limitations.
- (2) Actual cost of project-related long distance telephone calls.
- (3) Actual cost of reproduction of drawings and specifications for the specific project and which are in excess of any required by the terms of the contract.
- (4) Actual cost plus Ten Percent (10%) for expendable supplies and services not normally used on a routine or normal basis in an architectural or engineering office (i.e., aerial photography) and which are provided especially under this Agreement for the benefit of the City.

SCHEDULE OF REIMBURSABLE EXPENSES

Submit a complete list of the type or category of anticipated or normal reimbursable expenses.

EXPENSE OR SERVICE	BILLING RATE
Mileage outside the Denver metropolitan area	\$ _____/ mile
Photocopies (8½" x 11", 8½" x 14", etc.) not routine to projects	\$ _____/ each
Diazo / Blueline and Blackline Prints	\$ _____/ S.F.
Xerographic Copies or Printing (larger format sheets)	\$ _____/ S.F.
Photographic Reproduction on Mylar	\$ _____/ S.F.
Diazo or Xerographic Reproduction on Mylar	\$ _____/ S.F.
Diazo or Xerographic Reproduction Erasable Sepia	\$ _____/ S.F.
Outside Materials / Services / Supplies	Cost + _____ %
other:	\$ _____
other:	\$ _____
other:	\$ _____
other:	\$ _____
other:	\$ _____
other:	\$ _____
other:	\$ _____
other:	\$ _____

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SAMPLE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 200__, by and between the **CITY AND COUNTY OF DENVER** (“City”), a municipal corporation of the State of Colorado, and _____ (“Consultant”), whose address _____ Colorado, _____.

WITNESSETH:

WHEREAS, the City desires to retain the Consultant to provide _____ services for the Design and Construction Management Division of the City’s Department of Public Works on the _____ Project, Project No. _____ (“Project”); and

WHEREAS, the Consultant represents that it has the requisite licensing, qualifications and experience required to perform the services contemplated by this Agreement, and that it is ready, willing and able to provide the services specified herein as an independent contractor; and

WHEREAS, the Consultant prepared and provided a proposal response to the City’s Request for Proposals; and

WHEREAS, the Consultant and the City have negotiated a Scope of Services and Fee Proposal for such professional services, a copy of which is attached hereto and incorporated herein as Exhibit A.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties hereto mutually agree as follows:

ARTICLE I. AUTHORITY: The City's Manager of Public Works ("Manager") is the City's representative who is responsible for authorizing and overseeing the work performed under this Agreement. The Manager hereby designates the City Engineer as the Manager's authorized representative for the purpose of directing, administering, coordinating and finally, reviewing and approving the work performed by the Consultant under this Agreement and for the purpose of designating a Project Manager. The “Project Manager,” who reports to and is designated by the City Engineer, shall be Jacobs Facilities, Inc. The Project Manager will e responsible for the day-to-day administration, coordination and oversight of work performed by the Consultant on the Project, except for approvals which are specifically identified in this Agreement as requiring the Manager's action. The Consultant recognizes that only the Manager of Public Works and the representatives designated herein have the authority to authorize or direct work under this Agreement.

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ARTICLE II. COMPENSATION: The Consultant shall provide professional _____ services, as directed by the Project Manager, in accordance with the terms and conditions of this Agreement, and the City shall compensate the Consultant for such services as set out below:

A. **Basic Services:** The City agrees to pay the Consultant, as compensation for any basic services rendered hereunder, an amount to be set forth for those professional testing and inspection services and other reimbursable expenses authorized by the Project Manager prior to commencement of such performance and satisfactorily performed by the Consultant. Compensation for the performance of such services and costs incurred for reimbursable expenses shall be based on the Consultant's fee schedule for services and expenses contained in Exhibit A.

B. **Additional Services:** Subject to prior approval of such costs by the Manager, the Consultant shall be paid its hourly rate for additional services not contemplated by Exhibit A, but which the City specifically requests in writing that the Consultant to provide under this Agreement.

C. **Invoices:** The Consultant shall invoice and be paid monthly for services performed and for fees and costs accrued only during the preceding month. In order to establish payment due the Consultant for services performed in accordance with the terms and conditions of this Agreement, the Consultant, at the end of each calendar month, shall present to the City a signed statement certifying the following: (i) the Basic Services actually performed during the month expressed with reference to the fee schedule contained in Exhibit A; (ii) a list of any Additional Service(s) actually performed during the month; and (iii) a list of any reimbursable expenses actually incurred and payable during the month. The Consultant shall also include with each statement all supporting documentation requested by the Project Manager or as is otherwise required to verify all invoiced amounts. In addition, the Consultant shall maintain hourly time records for all personnel performing hereunder and documentation of subconsultant billings and reimbursable expenses incurred sufficient to support any audits by the City. Payment of all invoiced amounts shall be made upon verification by the Project Manager of all services performed and reimbursable expensed incurred.

D. **Final Payment.** Final Payment to the Consultant shall not be made until after Final Completion, all guarantees, warranties, reports and other record documentation are delivered to the City, and this Agreement is otherwise fully performed by the Consultant.

E. **Maximum Contract Amount:** It is understood and agreed by the parties hereto that payment or reimbursement of any kind to the Consultant, for all work performed under this Agreement, shall not exceed a maximum of _____ **Thousand Dollars (\$_____.**00). In no event

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shall the maximum payment to the Consultant, for all work and services performed throughout the entire term of the contract exceed the contract maximum amount set forth above.

E. **Funding:** Notwithstanding any other term, provision, or condition herein, all payment obligations under this Agreement shall be limited to the funds duly and lawfully appropriated and encumbered or otherwise made available by the Denver City Council for the particular projects assigned to the Consultant under this Agreement for the particular year(s) in which this Agreement is in effect, and paid into the Treasury of the City. As of the date of this Agreement, the amount of _____ **Thousand Dollars (\$_____ .00)** has been lawfully appropriated for this Agreement.

The Manager, upon reasonable written request, will advise the Consultant in writing of the total amount of appropriated and encumbered funds which are or remain available for payment for all work by the Consultant. The issuance of any form of order or directive by the City which would cause the aggregate amount payable to the Consultant for a specific project to exceed the amount appropriated for the Consultant's work on a specific project is expressly prohibited.

In no event shall the issuance of any work directive, change order or other form of order or directive by the City be considered valid or binding if it requires additional compensable work to be performed, which work will cause the aggregate amount payable for such work to exceed the amount appropriated and encumbered, unless and until such time as the Consultant has been advised in writing by the Manager that a lawful appropriation sufficient to cover the entire cost of such additional work, has been made.

It shall be the responsibility of the Consultant to verify that the amounts already appropriated for the Consultant's work on a specific project are sufficient to cover the entire costs of such work, and any work undertaken or performed in excess of the amount appropriated is undertaken or performed in violation of the terms of this contract, without the proper authorization for such work, and at the Consultant's own risk.

ARTICLE III. SCOPE OF WORK:

A. The Consultant shall perform _____ services for the Project (the "Basic Services"), in accordance with the terms of this Agreement and Exhibit A. Such services shall include, but shall not be limited to, _____ services required by the _____; and administrative support services.

B. The Consultant shall review and become thoroughly familiar with the Project Design Services Agreement for the Project, dated _____, 2003 and incorporated by reference as

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Exhibit B, and the Construction Contract for the Project, including the Contract Drawings and Technical Specification referenced therein, _____, 2003 and incorporated by reference as Exhibit C and shall perform in accordance with the terms and conditions of these agreements.

C. All of the work performed by the Consultant under this Agreement shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform work of a nature similar to the work described in this Agreement.

D. The Consultant agrees to strictly conform to and be bound by written standards, criteria, budgetary considerations and memoranda of policy furnished to it by the City.

E. The Consultant shall provide all professional services required by the City in defending all claims against the City, which relate in any way to alleged default hereunder, errors or omissions of the Consultant or its subconsultants, without additional compensation.

F. The responsibilities and obligations of the Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, Consultant or subconsultant, or an employee of the City.

G. Coordination with the City and other involved agencies or third parties shall be a continuing work item. Such coordination may consist of progress and review meetings, work sessions and coordination with third parties. This work may also include office reviews of plans and documents as appropriate.

ARTICLE IV. PERSONNEL ASSIGNMENTS:

A. Those persons listed in Exhibit A are the principals and employees of the Consultant (the “Key People”) and the parties intend that such Key People be and remain assigned to the Project.

B. It is the intent of the parties hereto that all Key People be engaged to perform their specialty for all such services required by this Agreement, and that the Consultant's and the subconsultant's Key People be retained for the duration of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.

C. If any of the key people become unavailable for reasons beyond the control of the Consultant, then the Consultant, subject to the Manager’s approval, shall promptly appoint a replacement. The City or the Project Manager shall be provided with complete information on each replacement, including a current resume, and shall have the opportunity to interview any such replacement.

D. If during the term of this Agreement, the Manager determines that the performance of approved Key People for the Consultant or a subconsultant is not acceptable, she shall notify the Consultant and give the Consultant a reasonable period of time to correct such performance. Thereafter, the Manager may require the Consultant to reassign or replace such Key People. If the Manager notifies

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the Consultant that certain of its Key People or those of a subconsultant should be replaced, the Consultant will use its best efforts to replace them within ten (10) working days from the date of the Manager's notice.

E. Neither the Consultant nor any subconsultant shall have interests which are in conflict with interests of the City, including connection with or to the sale or promotion of equipment or material which may be used on the Project, and the Consultant shall make written inquiry of all of its subconsultants concerning the existence of or potential for such conflict. In unusual circumstances, and at the City's sole discretion, the City may grant a written waiver for the particular consultant or subconsultant.

F. Actions taken by the City under this Article shall not, in any way, relieve the Consultant of its responsibility for design deficiencies, errors, or omissions.

ARTICLE V: CONFLICT WITH CONTRACTOR OR DESIGN CONSULTANT - NOTICE

The Consultant agrees to perform its services under this Agreement in such a manner and at such times that the City, the project design consultant, and any contractor who has work to perform can do so without unreasonable delay. In the event that a conflict as to scheduling or access arises between the Consultant and any contractor or any project design consultant during the term of this Agreement, which in the opinion of the Consultant prevents it from scheduling or coordinating with the contractor or project design consultant in a timely manner to meet the City's needs hereunder, the Consultant shall verbally inform the City of such dispute within two (2) hours, and confirm such dispute in writing within eight (8) hours from the point in time such conflict becomes apparent. Upon receipt of such notice, the City, through the Director or a representative, shall attempt to resolve such dispute and communicate a decision regarding such dispute, in writing, to any contractor, any project design consultant, and the Consultant.

ARTICLE VI: INSURANCE:

A. **General Conditions:** Consultant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, performance, goods or services provided pursuant to this Agreement. Consultant 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 eight (8) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed 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 stating "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall

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send written notice to the Denver Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.” If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Consultant. Consultant shall be responsible for the payment of any deductible or self-insured retention. The City reserves the right to require the Consultant to provide a bond, at no cost to the City, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant. The Consultant 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:** Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant further agrees to have its agent or broker provide proof of Consultant’s required insurance on www.Ins-Cert.com and link the information to the City. The City reserves the right to require the Consultant to provide a certificate of insurance, a policy, or other proof of insurance as required by the City’s Risk Administrator in his sole discretion.

C. **Additional Insureds:** For general liability, excess/umbrella liability, pollution legal liability, Consultant’s insurer shall name the City as an additional insured.

D. **Waiver of Subrogation:** For all coverages, Consultant’s insurer shall waive subrogation rights against the City.

E. **Subcontractors:** All subcontractors, subconsultants, independent contractors, suppliers or other entities providing performance, goods or services required under this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Consultant. Consultant shall include all such subcontractors, subconsultants, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subcontractors maintain the required coverages. Consultant agrees to provide proof of insurance for all such subconsultants, subcontractors, independent contractors, suppliers or other entities upon request by the City.

F. **Workers’ Compensation/Employer’s Liability Insurance:** Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Consultant expressly represents to the City, as a material representation upon which the City is relying in

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entering into this Agreement, that none of the Consultant'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 Consultant executes this Agreement.

G. **General Liability:** Consultant shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

H. **Automobile Liability:** Consultant shall maintain limits of \$1,000,000 for bodily injury per person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage applicable to all vehicles operating on City property and elsewhere.

I. **Professional Liability:** Consultant shall maintain limits of \$1,000,000 for each claim, and \$1,000,000 aggregate limit for all claims.

J. **Excess/Umbrella Liability:** Consultant shall maintain limits of \$5,000,000. Aggregate limits must be "per project" or "per locations."

K. **Pollution Liability:** Consultant shall maintain limits of \$1,000,000 per occurrence and in the aggregate.

L. **Additional Provisions:**

(1) For all general liability, excessive/umbrella liability, pollution liability, if required, the policy must provide the following:

- (a) If any aggregate limit is reduce by twenty-five percent (25%) or more by paid or reserved claims, the Consultant shall notify the City within ten (10) days and reinstate the aggregates required;
- (b) Unlimited defense costs in excess of policy limits;
- (c) Contractual liability covering the indemnification provisions of this Agreement;
- (d) A severability of interests provision;
- (e) Waiver of exclusion for lawsuits by one insured against another;
- (f) A provision that coverage is primary; and
- (g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

(2) For all general liability, excessive/umbrella liability, pollution liability and professional liability, if required and if the policy is a claims-made policy, then the retroactive date

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must be on or before the contract date or the first date when any performance, goods or services were provided to the City, whichever is earlier.

ARTICLE VII. INDEMNIFICATION: The Consultant shall defend, release, indemnify and save and hold harmless the City, its officers, agents and employees from and against: (1) any and all damages, including but not limited to loss of use, to property or injuries to or death of any person or persons (including but not limited to property and officers, agents and employees of the City) and (2) any and all claims, demands, suits, actions, liabilities, costs, expenses (including but not limited to reasonable attorney fees, expert witness fees and all associated defense fees), causes of action, or other legal, equitable or administrative proceedings of any kind or nature whatsoever, of or by anyone whomsoever, regardless of the legal theory(ies) upon which premised, including but not limited to contract, tort, express and/or implied warranty, strict liability, and workers' compensation, in any way resulting from, connected with, or arising out of, directly or indirectly, the tortious or negligent actions or omissions of the Consultant or those performing under it in connection with its operations or performance herewith or its use or occupancy of real or personal property hereunder, including tortious or negligent actions or omissions of subconsultants, and tortious or negligent acts or omissions of the officers, employees, agents, representatives, invitees, or licensees of the Consultant or its subconsultants; provided however, that the Consultant need not indemnify the City or its officers, agents and employees from damages proximately caused by and apportioned to the sole negligence of the City's officers, agents and employees.

This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion elects to provide its own defense. The City retains the right to disapprove counsel, if any, selected by the Consultant to fulfill the forgoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised.

Insurance coverage requirements specified herein shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection in the performance of this Agreement.

This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

ARTICLE VIII. COMPLIANCE WITH LAWS

A. **Laws and Regulations.** The Consultant shall be responsible for the compliance of all activities undertaken by the Consultant pursuant to this Agreement and all drawings, documents, studies,

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reports and plans and specifications prepared and compiled as a part of this Agreement with all applicable laws, statutes, codes, ordinances, executive orders and rules and regulations of the City and County of Denver, the State of Colorado, the United States of America or any other governmental entity having jurisdiction over the subject matter of this Agreement, including all applicable environmental laws and regulations, all applicable safety laws and regulations, the Americans with Disabilities Act (the "ADA"), to the extent applicable, and the Denver Building Code (collectively the "Legal Requirements"). In the performance of its work and services, the Consultant shall make an independent evaluation with regard to such Legal Requirements and shall provide, as part of its Basic Services, all requisite retesting and inspection as may be necessary to obtain governmental approvals for the Project and comply with all Legal Requirements. The Consultant further agrees to perform its work or services in strict compliance with all Legal Requirements and all applicable industry standards and specifications in effect at the time of the execution of this Agreement or which may become effective before all work and services called for under this Agreement have been completed and accepted by the City.

B. Governmental Authorities. The Consultant shall perform all of its duties, obligations and services, hereunder in a manner that complies with the City's directions to the Consultant and/or the City's obligations under any Legal Requirements to consult with, solicit advice from and involve in the City's decision-making process, all applicable governmental or quasi-governmental authorities having jurisdiction over the Project and the surrounding area, including, but not limited to, the State of Colorado and any agency or department thereof, and the City and County of Denver, and any agency or department thereof. The Consultant shall comply with all binding interpretations and directives issued by any such entity. The Consultant shall thoroughly document all communications with governing and regulatory authorities having jurisdiction over the subject matter of this Agreement and shall obtain written evidence of any binding interpretations, directives, waivers or appeals received from such authorities.

C. Licensing Requirements. The Consultant shall comply, at its own expense, with all laws and regulations, including, but not limited to, licensing and registration requirements pertaining to its professional status and that of its employees, partners, associates, consultants under subcontract and others employed or utilized to render the work and services called for by this Agreement.

ARTICLE IX. **ACCOUNTING RECORDS:** Records of the Consultant's direct personnel, Consultant and reimbursable expenses pertaining to the project and records of accounts between the City and the Consultant shall be kept on a generally recognized accounting basis and shall be available for audit by the City, including the Auditor of the City or authorized representative within the City, at mutually convenient times for three (3) years after the final payment under this Agreement.

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ARTICLE X. NONDISCRIMINATION:

In connection with the performance of work under this Agreement, the Consultant 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, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

ARTICLE XI. CONFLICT OF INTEREST: The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Court further agrees not to hire or contract for services any official, officer, or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

ARTICLE XII. TAXES AND LICENSES: The Consultant shall promptly pay, when they are due, all taxes, excises, license fees and permit fees, of whatever nature, applicable to the work which it performs under this Agreement, and shall take out and keep current all required municipal, county, state or federal licenses required to perform this work. The Consultant shall furnish the Manager, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes. The Consultant shall promptly pay, all owed bills, debts and obligations it incurs performing work under this Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned or beneficially owned by the City.

ARTICLE XIII. TERM AND TERMINATION:

A. Nothing herein shall be construed as giving the Consultant the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the Manager.

B. The Manager may terminate this Agreement for cause at any time if the Consultant's services become unsatisfactory to the Manager. The City shall have the sole discretion to permit the Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.

C. In the event of a termination for cause, or in the event the Consultant becomes unable to serve under this Agreement, the City may take over work to be done under this Agreement and prosecute the work to the completion by contract or otherwise, and the Consultant shall be liable to City

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for all reasonable cost in excess of what the City would have paid the Consultant had there been no termination for cause.

D. The City may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) working days' prior written notice to the Consultant, which notice shall state the date of cancellation and termination.

E. If the Consultant's services are terminated, postponed or revised, or if the Consultant shall be discharged before all the work contemplated has been completed, or if work for any reason shall be stopped or discontinued, the Consultant shall be paid only for the portion of work which has been satisfactorily completed at the time of such dismissal, termination, postponement, revision or stoppage.

F. All drawings, specifications, and other documents relating to the design or administration of work completed or partially completed shall be delivered by the Consultant to the City in the event of any termination.

G. In the event of any termination, the Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, delivery of drawings, specifications, and other documents referred to herein, and assisting the City during a transition to another Consultant, if applicable.

ARTICLE XIV. OWNERSHIP OF DOCUMENTS

A. The City shall have title and all intellectual and other property rights, in and to all phased and final testing and inspection results, analyses, reports, studies, recommendations, designs, plans, and specifications, and all data used in the development of the same, including all photographs, drawings, draft specifications, contract documents, estimates, models, notes, work papers and any other materials or work products, whether in electronic or hard copy format, created by the Consultant pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively the "Documents"), whether the Project for which the Documents were created is executed or not. The Consultant shall identify and disclose, as requested, all such Documents to the City.

To the extent permitted by the U.S. Copyright Act, 17 USC § 101 et seq., as the same may be amended from time to time, the Documents are a "work made for hire," and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a "work made for hire," the Consultant hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world

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and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.

B. The Consultant shall provide (and cause its employees and subcontractors to provide) all assistance reasonably requested in securing for the City's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City's name, all rights to such Documents.

C. The Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder.

D. The Consultant shall be permitted to retain reproducible copies of all of the Documents for the information and reference, and the originals of all of the Documents, including all CAD disks, shall be delivered to the City promptly upon completion thereof, or if authorized by the City's Project Manager, upon termination or expiration of this Agreement.

ARTICLE XV. PROTECTION OF PROPRIETARY OR CONFIDENTIAL INFORMATION

A. **City Information:** The Consultant acknowledges and accepts that, in performance of its work under the terms of this Agreement, the Consultant may have access to Proprietary Data or confidential information which may be owned or controlled by the City and that the disclosure of such data or information may be damaging to the City or third parties. As such, the Consultant agrees that all information provided or otherwise disclosed by the City to the Consultant be held in confidence and used only in the performance of its obligations under this Agreement. The Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall mean geographic materials or Geographic Information Systems ("GIS") data relating to the City and County of Denver including but not limited to maps, computer programs, aerial photography, methodologies, software, diagnostics and documents; or any other materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

1. **Use of Proprietary Data or confidential information:** The Consultant agrees that the Consultant shall not use Proprietary Data or confidential information for any purpose other than performing its obligations under its Agreement and, that by providing this Proprietary Data or confidential information, the City is not granting to the Consultant any right or license to use such data

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except as provided for herein. The Consultant further agrees not to disclose or distribute to any other party, in whole or in part, the Proprietary Data or confidential information without written authorization from the GIS Administrator or the Manager. The Consultant agrees that any ideas, concepts, know-how, computer programs, or data processing techniques developed by the Consultant or provided by the City in connection with this Agreement or the Proprietary Data or confidential information shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The Consultant agrees, with respect to the Proprietary Data and confidential information, that: (1) the Consultant shall not copy, recreate, reverse engineer or decompile such data, in whole or in part; unless authorized in writing by the City's GIS Data Administrator or the Manager; (2) the Consultant shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (3) the Consultant shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

2. Employees and Subconsultants: The Consultant will inform its employees and officers of the obligations under this Agreement and all requirements and obligations of the Consultant under this Agreement shall survive the expiration or earlier termination of this Agreement. The Consultant shall not disclose Proprietary Data or confidential information to subconsultants unless such subconsultants are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

3. Disclaimer: Notwithstanding any other provision of this Agreement, **THE CITY IS FURNISHING PROPRIETARY DATA AND CONFIDENTIAL INFORMATION ON AN "AS IS" BASIS, WITHOUT ANY SUPPORT WHATSOEVER, AND WITHOUT REPRESENTATION, WARRANTY OR GUARANTEE, INCLUDING BUT NOT IN ANY MANNER LIMITED TO, FITNESS, MERCHANTABILITY OR THE ACCURACY AND COMPLETENESS OF THE GIS DATA OR CONFIDENTIAL INFORMATION. THE CONSULTANT IS HEREBY ADVISED TO VERIFY ITS WORK. THE CITY ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS HEREIN. SPECIFICALLY, THE CITY IS NOT RESPONSIBLE FOR ANY COSTS INCLUDING, BUT NOT LIMITED TO, THOSE INCURRED AS RESULT OF LOST REVENUES, LOSS OF USE OF DATA, THE COSTS OF RECOVERING SUCH PROGRAMS OR DATA, THE COST OF ANY SUBSTITUTE PROGRAM, CLAIMS BY THIRD PARTIES, OR FOR SIMILAR COSTS. IF DISCREPANCIES ARE FOUND, THE CONSULTANT AGREES TO CONTACT THE CITY IMMEDIATELY.**

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B. **Consultant's Information:** The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise the Consultant of such request in order to give the Consultant the opportunity to object to the disclosure of any of its 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 the Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Consultant 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 the Consultant'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.

ARTICLE XVI. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement by the Consultant, time is of the essence.

ARTICLE XVII. MISCELLANEOUS PROVISIONS:

A. **Cooperation.** The Consultant agrees to perform its services under this Agreement in such a manner and at such times that the City and any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.

B. **Professional Responsibility.** All of the work performed by the Consultant under this Agreement shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform work or services of a similar nature to the work or services described in this Agreement.

C. **Compliance With SBE Requirement.** This Agreement is subject to all applicable provisions of Divisions 1 and 2 of Article VII of Chapter 28 of the City's Revised Municipal Code. Without limiting the general applicability of the foregoing, the Consultant acknowledges its continuing duty, pursuant to section 28-218, Revised Municipal Code, to maintain throughout the duration of this Agreement, compliance with the level of small business enterprise participation, upon which the City approved the award of this Agreement to the Consultant. Nothing contained in this Article or in the referenced City ordinance, shall negate the City's right to prior approval of subconsultants, or substitutes therefor, under this Agreement.

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D. **Term.** The term of this Agreement shall commence upon written Notice to Proceed from the City to Consultant and end upon final completion of the services to be provided by the Consultant. The Insurance and Indemnification provisions of this Agreement shall survive the term.

E. **Disputes.** All disputes of any nature whatsoever regarding this Agreement, including but not limited to disputes concerning payment or breach or default of this Agreement, shall be ultimately resolved by administrative hearing pursuant to D.R.M.C. Section 56-106 or, with respect to appropriate issues involving SBE requirements, by D.R.M.C. 28-33.

F. **Status of Consultant:** It is understood and agreed that the status of the Consultant shall be that of an independent Consultant retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1.E(x) of the Charter of the City and it is not intended, nor shall it be construed, that the Consultant, or any member of its staff or any Consultant, is an employee, officer or agent of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

G. **Exhibits:** The following documents are incorporated herein and made a part of this Agreement:

1. Exhibit A, Consultant's Scope of Services and Fee Proposal
2. Exhibit B, Design Service Agreement, (incorporated by reference only)
3. Exhibit C, Construction Contract (incorporated by reference only)

The terms and conditions of this Agreement shall control over any contradictory or inconsistent terms and conditions that may be found or contained in the above referenced Exhibits.

H. **Rights and Remedies Not Waived:** In no event shall any payment by the City constitute a waiver of any breach of covenant or default which may then exist on the part of the Consultant. No assent, expressed or implied, to any breach of the Agreement shall be held to be a waiver of any later or other breach.

I. **Waiver of C.R.S. 13-20-802 et. seq.:** The Consultant specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes (also designated C.R.S. 13.2-802 et seq.) relating to design defects in the Project under this Agreement.

J. **Subject to Local Laws; Venue:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations, and Executive Orders enacted 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 legal action

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relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

K. **No Third Party Beneficiaries:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the City and the Consultant that any person other than the City or the Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

L. **Assignment and Subcontracting:** The City is not obligated or liable under this Agreement to any party other than the Consultant named herein. The Consultant understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting. Any attempt by the Consultant to assign or subcontract its rights hereunder without such prior written consent of the City shall, at the option of the City, automatically terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the City. In the event any such subcontracting shall occur, with the City's approval, such action shall not be construed to create any contractual relationship between the City and such subconsultant, and the Consultant named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

M. **Taxes, Charges and Penalties:** The City and County of Denver shall not be liable for the payment of taxes, late charges, or penalties of any nature.

N. **Paragraph Headings:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

O. **Severability:** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement, except for the provisions of this Agreement requiring prior appropriation and limiting the total amount to be paid by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

P. **Agreement as Complete Integration; Amendments:** This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. No

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subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signators of the original Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

Q. **Counterparts:** This Agreement will be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the City and the Consultant have executed, through their respective lawfully empowered representatives, this Agreement as of the day and year first above written.

CITY AND COUNTY OF DENVER

ATTEST:

WAYNE E. VADEN, Clerk
and Recorder, Ex-Officio Clerk of the
City and County of Denver

APPROVED AS TO FORM
COLE FINEGAN, Attorney
For the City and County of Denver

By: _____
Assistant City Attorney

By: _____
MAYOR

RECOMMENDED AND APPROVED:

By: _____
Manager of Public Works

RECOMMENDED AND APPROVED:

By: _____
Auditor
Contract Control No. _____

"CITY"

IRS # _____

By: _____

Title: _____

"CONSULTANT"