

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is made and entered into, effective as of the date set forth on the City’s signature page (“**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and \_\_\_\_\_, a Colorado \_\_\_\_\_, whose address is \_\_\_\_\_ (the “**Consultant**”), who shall be individually referred to herein as a “Party” and jointly as the “Parties”.

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

1. **WORK TO BE PERFORMED:**

A. **Services:** The Consultant shall diligently and professionally perform the services and produce all the deliverables described in the scope of services attached hereto as **Exhibit A** and the schedule and rates attached hereto as **Exhibit B**, both of which exhibits are incorporated herein by this reference. The Consultant shall faithfully perform the work required under this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement. Any professional services specified under this Agreement which requires the employment of licensed or registered personnel shall be performed by licensed or registered personnel.

B. **Oversight:** The Consultant shall conduct the work under the general direction of and in coordination with the Manager of the Denver Department of Parks and Recreation or other designated supervisory personnel (the “**Manager**”) and the Department employee(s) assigned to manage this work (the “**Department**”) and make every reasonable effort to fully coordinate all services with any City agency or any person or firm under contract with the City doing work which affects the Consultant’s work. All records, data, specifications and documentation prepared by the Consultant under this Agreement, when delivered to and accepted by the Manager, shall become the property of the City. The Consultant agrees to allow the City to review any of the procedures used by it in doing the work under this Agreement and to make available for inspection all notes and other documents used in performing the work.

2. **TERM:** The term of the Agreement is from the Effective Date until \_\_\_\_\_, 20\_\_, or until the Maximum Contract Amount specified in sub-section 3.A.

below is expended and all of the Tasks specified in **Exhibit A** has been satisfactorily performed, whichever is sooner, unless this Agreement is terminated earlier as provided in this Agreement or is extended as provided in a separate amendment to this Agreement (“**Term**”). Subject to the Manager’s prior written authorization, the Consultant shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Manager.

**3. COMPENSATION AND PAYMENT:**

**A. Maximum Contract Amount:** The Maximum Contract Amount to be paid by the City to the Consultant for the performance of the work set out in **Exhibit A** shall in no event exceed the sum of \_\_\_\_\_ Dollars (\$00.00), unless this Agreement is modified to increase said amount by a duly authorized and written amendment to this Agreement executed by the Parties in the same manner as this Agreement.

**B. Payments:** Monthly payments shall be made to the Consultant in accordance with the progress of the work as set out in **Exhibit A** and the schedule and rates specified in **Exhibit B**. Monthly invoices submitted by the Consultant to the Department must fully document services rendered and hours spent providing the specified services, and any other authorized and actually incurred expenses, and must be approved by the Manager in writing in order to be eligible for compensation under this Agreement. All invoicing and payments are subject to the City’s Prompt Payment Ordinance, §§ 20-107 through 20-118, D.R.M.C.

**C. Subject to Appropriation; No Multiple Year Obligation:** It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The Consultant acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**D. Amendment:** The Consultant acknowledges that the City is not obligated to execute an amendment to this Agreement for any further phase of work by the Consultant other than the work described in **Exhibit A**, and that any further phase of work performed by Consultant beyond that specifically described or without an amendment to this Agreement is performed at Consultant’s risk and without authorization under this Agreement.

**4. TERMINATION:**

**A. Termination for Convenience of the City:** The Manager, upon giving twenty (20) calendar days written notice (unless a longer period is given), may terminate this Agreement, in whole or part, when it is in the best interest of the City as determined by the Manager. Any unfinished portion of the work shall be faithfully and timely performed by the Consultant to the extent directed by the Manager (in the Manager's discretion), and compensation for all such authorized Work performed shall be paid to the Consultant in accordance with this Agreement.

**B. Termination for Cause:** The City and the Consultant shall each have the right to terminate this Agreement, with cause, upon written notice to the other party. A termination shall be deemed "with cause" when it is based on a material breach of the covenants or a substantial default under this Agreement which has not been corrected or resolved to the satisfaction of the non-breaching or non-defaulting party within a reasonable time specified by the non-breaching or non-defaulting party in a written notice to the breaching or defaulting party. In addition, the City shall have the right to terminate this Agreement immediately for cause if the Consultant or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Consultant's business. Nothing herein shall be construed as giving the Consultant the right to continue performing work under this Agreement beyond the time when the Manager notifies the Consultant that the Consultant's work has become unsatisfactory to the Manager and the Manager is terminating the Agreement, except to the extent that the Manager specifies certain work to be completed prior to terminating this Agreement.

**B. Compensation:** If this Agreement is terminated by the City for cause, the Consultant shall be compensated for all work satisfactorily completed and delivered to the City, and such compensation shall be limited to: (1) the sum of the amounts contained in invoices already submitted and approved by the Manager and (2) the cost of any work which the Manager authorizes in writing which the Manager determines is needed to accomplish an orderly termination of the work. If this Agreement is terminated by the City without cause or by the Consultant with cause, the Consultant shall also be compensated for any reasonable costs the

Consultant has actually incurred in performing authorized work hereunder prior to the date on which all work is terminated. Upon termination of this Agreement by the City, the Consultant shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

C. Product Delivery: If this Agreement is terminated for any reason, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Consultant is using by whatever method the City deems expedient. The Consultant shall deliver to the City all drafts or other documents the Consultant has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City. These documents and materials shall be the property of the City. Copies of work product incomplete at the time of termination shall be marked "DRAFT-INCOMPLETE".

5. **RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any action or inaction, including any payments to the Consultant, by the City constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of the Consultant, and the City's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. No assent, expressed or implied, to any breach or default shall be deemed or taken to be a waiver of any other breach or default.

6. **INDEPENDENT CONTRACTOR**: It is understood and agreed that the status of the Consultant shall be that of an independent contractor and an entity or person 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. It is not intended, nor shall it be construed, that the Consultant or the Consultant's employees, agents, or subcontractors are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever. The Consultant is responsible for the operational management, errors and omissions of the Consultant's employees, agents, and subcontractors. Without limiting the foregoing, the Consultant understands and acknowledges that the Consultant and the Consultant's employees, agents and subcontractors: a) are not entitled to workers' compensation benefits through the City; b) are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Consultant or some other entity

besides the City; and c) are obligated to pay federal and state taxes on any monies earned pursuant to this Agreement. Furthermore, it is understood and agreed that nothing in this Agreement is intended, or shall be construed, to constitute a joint venture between the Parties.

**7. INSURANCE:**

**A. General Conditions:** The Consultant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The 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 three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, the Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Consultant. The Consultant shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the 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:** The Consultant shall provide a copy of this Agreement to its insurance agent or broker. The Consultant may not commence services or work relating to the Agreement prior to placement of coverage. The Consultant certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this

Agreement shall not act as a waiver of Consultant's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. Additional Insureds: For Commercial General Liability and Business Auto Liability, the Consultant and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

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

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

F. Workers' Compensation/Employer's Liability Insurance: The 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 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. The Consultant expressly represents to the City, as a material representation upon which the City is relying in 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 the Consultant executes this Agreement.

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

**H.** Business Automobile Liability: The Consultant shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

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

**J.** Additional Provisions:

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

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

(ii) Defense costs in excess of policy limits;

(iii) A severability of interests, separation of insureds or cross liability provision; and

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

(2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

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

**8. DEFENSE & INDEMNIFICATION:**

**A.** The Consultant hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Consultant or its sub-consultants or subcontractors either passive or active, irrespective of fault, including the City's concurrent

negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

**B.** The Consultant's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether an action has been filed in court on the Claim. The Consultant's duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City's negligence or willful misconduct was the sole cause of the alleged damages.

**C.** The Consultant will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement 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.

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

**9. COLORADO GOVERNMENTAL IMMUNITY ACT:** The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S.

**10. PERMITS, LICENSES, TAXES, CHARGES AND PENALTIES:** The Consultant agrees to pay promptly all taxes, excises, license fees, and permit fees of whatever nature applicable to its operations or activities under this Agreement, and to take out and keep current all required licenses or permits (federal, state, or local) required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. The Consultant further agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations and the performance of this Agreement and not to permit the same to be come delinquent. The City shall not be liable

for the payment of taxes, late charges or penalties of any nature, except for any additional amounts which the City may be required to pay under § 20-107 to § 20-115, D.R.M.C. The City is a tax exempt entity.

11. **EXAMINATION OF RECORDS:** The Consultant agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the Consultant, involving transactions related to this Agreement.

12. **ASSIGNMENT & SUBCONTRACT:** Unless otherwise expressly provided in this Agreement, the Consultant covenants and agrees that the Consultant will not assign, transfer or subcontract the Consultant's rights and obligations hereunder without first obtaining the written consent of the Manager. Any assignment or subcontract approved by the Manager may require new or extended insurance being provided by the Consultant or the Consultant's assignee or subcontractor, as specified in the Manager's written consent. Any attempt by the Consultant to assign, transfer or subcontract the Consultant's rights and obligations hereunder without such prior written consent of the Manager may, at the option of said Manager, terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager.

13. **NO THIRD PARTY BENEFICIARY:** The Parties understand and expressly agree 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 Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties 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.

14. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be executed by the City, as required by Charter and ordinance.

15. **INTEGRATION & AMENDMENTS:** This Agreement, including the exhibits and attachments hereto (each of which is specifically incorporated herein), is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification hereto shall have any force or effect, unless embodied in

this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other modification shall have any force of effect unless embodied in a written amendment to this Agreement properly executed by the Parties. Any oral representation by any officer or employee of the City at variance with terms and conditions of this Agreement or any written amendment to this Agreement shall not have any force or effect nor bind the City.

**16. SEVERABILITY:** The Parties agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, the validity of the remaining portions or provisions shall not be affected, if the intent of the Parties can be fulfilled.

**17. CONFLICT OF INTEREST:**

**A.** No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Consultant shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

**B.** The Consultant shall not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Consultant represents that the Consultant has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interests of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after the City has given the Consultant written notice which describes the conflict.

**18. NOTICES:** Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance, including changes to the persons to be notified or their addresses, shall be made:

By Consultant to:      Manager of Parks and Recreation  
201 West Colfax Avenue, Dept. 601  
Denver, Colorado 80202

And by the City to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All notices shall be in writing and provided by either personal delivery, certified mail, return receipt requested, or overnight courier. All notices are effective upon personal delivery or upon placing in the United States mail or with the courier service.

**19. DISPUTES:** All disputes of whatsoever nature between the City and the Consultant regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code (“D.R.M.C.”), § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Manager of the Department of Parks and Recreation.

**20. GOVERNING LAW; COMPLIANCE WITH LAW; VENUE:**

**A. Governing Law:** This Agreement shall be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. 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.

**B. Compliance with Law:** The Consultant shall perform or cause to be performed all services and work under this Agreement in full compliance with all applicable laws, ordinances, codes, rules, regulations and executive orders of the United States of America, the State of Colorado, and the City and County of Denver.

**C. Venue:** Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

**21. NO DISCRIMINATION IN EMPLOYMENT:** 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 the Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

**22. SMALL BUSINESS ENTERPRISES:** The Consultant shall make a good faith effort to utilize qualified and available Small Business Enterprises (SBE) to the extent required by § 28-205, *et seq.*, D.R.M.C.

**23. PREVAILING WAGES:** Employees of the Consultant or the Consultant's subcontractors may be subject to the payment of prevailing wages pursuant to § 20-76, D.R.M.C., depending upon the nature of their work. By executing this Agreement, the Consultant covenants and affirms that the Consultant is familiar with the prevailing wages provisions and is prepared to pay or cause to be paid prevailing wages, if any, required by the scope of work of the Consultant or the Consultant's subcontractors.

**24. PAYMENT OF LIVING WAGES:**

**A.** Employees of the Consultant or the Consultant's sub-consultants or subcontractors may be subject to the payment of living wages pursuant to § 20-80 *et seq.*, D.R.M.C., depending upon the nature of their work. Pursuant to § 20-80, D.R.M.C., the Consultant shall pay every Covered Worker, as defined in § 20-80(a) D.R.M.C., employed by the Consultant directly upon the site of the work under this Agreement, the full amounts accrued at the time of payment, computed at wage rates not less than that specified in § 20-80(c), D.R.M.C., regardless of any contractual relationship which may be alleged to exist between the Consultant or any subcontractor and such workers. The Consultant shall post in a prominent place which is easily accessible to the Covered Workers that scale of wages to be paid to such workers.

**B.** The Consultant shall furnish to the City Auditor or his authorized representative, upon the Auditor's request, a true and correct copy of the payroll records of all Covered Workers working under this Agreement, either for the Consultant or any subcontractor. All such payroll records shall include information showing the number of hours worked by each Covered Workers, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such Covered Worker. The payroll record shall be accompanied by a sworn statement of the Consultant that the copy is a true and correct copy of the payroll records of all Covered Workers working under this Agreement, either for the Consultant or a subcontractor, that payments were made to the Covered Workers as set forth in such records, that no deductions were made other than those set forth in such records, and that all Covered Workers employed on work under this Agreement, whether by the Consultant or any subcontractor, were paid the living wages as set forth in this Agreement.

C. Increases in living wages pursuant to § 20-80, D.R.M.C., effective after the date of this Agreement shall not be mandatory on either the Consultant or the subcontractors if the term of this Agreement is less than one year. Increases in the living wages pursuant to § 20-80, D.R.M.C., shall be mandatory for the Consultant and the Consultant's subcontractors if the term of this Agreement is longer than one year, effective on the anniversary date of this Agreement. In no event shall any increases in living wages over the amount stated in this Agreement result in any increased liability on the part of the City, and the possibility and risk of any such increase is assumed by the Consultant. Decreases in living wages after the date of this Agreement shall not be permitted.

D. If any worker to whom the living wages are to be paid, employed by the Consultant or any subcontractor to perform work hereunder, has been or is being paid a rate of wages less than that required by this section, the Manager may, at the Manager's option, by written notice to the Consultant, withhold further payment to the Consultant or suspend or terminate the Consultant's right to proceed with the work or such part of the work as to which there has been a failure to pay the required wages. In the event of termination, the Consultant shall be liable to the City for any excess costs occasioned to the City thereby.

25. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Consultant shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision or refusal to cooperate with implementation of the policy can result in the City barring the Consultant from City facilities or participating in City operations.

26. **PROPRIETARY OR CONFIDENTIAL INFORMATION; OPEN RECORDS:**

A. **City Information:** The Consultant acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Consultant may have access to proprietary data or confidential information that may be owned or controlled by the City, and that the disclosure of such proprietary data or confidential information may be damaging to the City or third parties. The Consultant agrees that all proprietary data or confidential information provided or otherwise disclosed by the City to the Consultant shall be held in confidence and used only in the performance of the Consultant's obligations under this Agreement. The Consultant shall exercise the same standard of care to protect such proprietary data and confidential information as a reasonably prudent consultant would to protect the Consultant's

own proprietary data or confidential information. Proprietary data and confidential information shall include, but not limited to, any materials or information which is designated or marked "Proprietary" or "Confidential" by the City or its agents, provided to or made available to the Consultant by the City subject to a confidentiality agreement or notice of confidentiality, or used by the City under a licensing agreement or other authorization by the owner of the materials or information. Proprietary data and confidential information may be in hardcopy, printed, digital or electronic format.

(1) **Use of Proprietary Data or Confidential Information:** Except as expressly provided by the terms of this Agreement and subject to written permission of the Manager, the Consultant agrees that the Consultant shall not disclose, disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the proprietary data or confidential information, or any part thereof, or any repackaged form of the proprietary data or confidential information, or any part thereof, to any other person, party or entity in any form or media for any purpose other than performing the Consultant's obligations under this Agreement. The Consultant further acknowledges 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 or information except as provided in this Agreement.

The Consultant agrees that any ideas, concepts, knowledge, computer programs, or data processing techniques developed by the Consultant or provided by the City in connection with this Agreement, including any proprietary data or any 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 Manager; (2) the Consultant shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data or information; (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 information or work products incorporating such data or information to the City.

(2) **Employees and Subcontractors:** The Consultant shall inform the Consultant's 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 subcontractors unless such subcontractors 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 proprietary data or confidential information. The Consultant is hereby advised to verify the Consultant’s work performed in reliance upon the proprietary data or confidential information. 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 a 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.**

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., § 24-72-201, *et seq.*, C.R.S., 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 the Consultant’s 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 the Consultant’s 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 the Consultant’s claim of privilege against disclosure under this subsection 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.

**27. INTELLECTUAL PROPERTY RIGHTS:** The Parties intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Consultant and paid for by the City pursuant to this Agreement, in preliminary or final forms and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Consultant shall disclose all such Materials to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Consultant hereby sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity.

**28. SOFTWARE PIRACY PROHIBITION:** The Consultant shall perform no work under this Agreement that results in or from the acquisition, operation, maintenance, or use of computer software in violation of United States copyright laws or applicable licensing restrictions. The Consultant hereby covenants and agrees that, for the term of this Agreement and any extensions, the Consultant has in place appropriate systems and controls to prevent such violations of federal law and licensing restrictions. If the City determines that the Consultant is in violation of this provision, the City may exercise any remedy available at law or equity or under this Agreement, including immediate termination of the Agreement and any remedy consistent with United States copyright laws or applicable licensing restrictions. The indemnification provision of this Agreement shall be applicable to any such violations by the Consultant.

**29. NO EMPLOYMENT OF ILLEGAL ALIENS.**

**A.** The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the "Certification Statute") and the Consultant is liable for any violations as provided in the Certification Statute.

**B.** The Consultant certifies that:

1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

2) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the “Department Program”), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**C.** The Consultant also agrees and represents that:

1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program or the Department Program.

4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three days. The Consultant will also then terminate such sub-consultant or subcontractor if within three days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

**D.** The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so

terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.

**30. LEGAL AUTHORITY:** The Consultant assures and guarantees that the Consultant possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

The person or persons signing and executing this Agreement on behalf of the Consultant, do hereby warrant and guarantee that he/she or they have been fully authorized by the Consultant to execute this Agreement on behalf of the Consultant and to validly and legally bind the Consultant to all the terms, performances and provisions herein set forth.

The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the Consultant or the person(s) signing the Agreement to enter into this Agreement.

**31. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

**32. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** This Agreement consists of Paragraphs 1 through 38 which precede the signature page (“Agreement Text”), and the following exhibits and attachments which are incorporated herein and made a part hereof by reference:

Exhibit A	Scope of Services
Exhibit B	Schedule and Rates
Exhibit C	Certificate of Insurance

In the event of (i) an irreconcilable conflict between a provision of the Agreement Text and any of the listed exhibits or attachments or among provisions of any exhibits or attachments, such that it is impossible to give reasonable effect to all, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Agreement Text  
Exhibit \_\_\_\_  
Exhibit \_\_\_\_

33. **SURVIVAL OF CERTAIN PROVISIONS:** The Parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or earlier termination of this Agreement, shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Consultant's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

34. **INUREMENT:** The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

35. **TIME IS OF THE ESSENCE:** The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

36. **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.

37. **CITY EXECUTION OF AGREEMENT:** This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

38. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

39. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.