

ON-CALL PROGRAM MANAGEMENT AGREEMENT

between

THE CITY AND COUNTY OF DENVER
and
TC DENVER DEVELOPMENT, INC.

Contract No. 201839614

THIS AGREEMENT is made and entered into between the **CITY AND COUNTY OF DENVER** (the "City"), a municipal corporation of the State of Colorado, and **TC DENVER DEVELOPMENT, INC.** (the "Consultant"), a Delaware corporation registered to do business in Colorado, whose address is 1225 17th Street, Suite 3050, Denver, Colorado 80202.

RECITALS

1. The City wishes to secure professional program management, project management, and related services ("Program Management") to support the Colorado Convention Center Expansion or "Program" on an "as needed" basis; and
2. The Consultant represents that it has the present capacity, experience and qualifications to perform professional Program Management and related services for the City; and
3. In response to the City's Request for Qualifications, the Consultant submitted a proposal for such services to the City. The Consultant and the City have negotiated a Scope of Services and Rates for such professional services, copies of which are attached hereto and incorporated herein as **Exhibit A** and **Exhibit B**;

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

SECTION 1 – ENGAGEMENT

1.01 Engagement. The City engages the Consultant with respect to the furnishing of professional Program Management services on an on-call basis, as set forth in this Agreement. The Consultant accepts such engagement upon, subject to and in accordance with the terms, conditions and provisions of this Agreement.

1.02 Line of Authority for Contract Administration. The City's Executive Director of Public Works ("Manager") is the City's representative who is responsible for authorizing and approving the work performed under this Agreement. The Manager hereby designates the City Engineer as the Manager's authorized representative for the purpose of issuing a written Notice to Proceed and administering, coordinating and initially approving the services performed by the Consultant under this Agreement. In addition, the project manager, who reports to the City Engineer ("Project Manager") shall be responsible for the day-to-day administration, coordination and approval of services performed by the Consultant, except for approvals that are specifically identified in this Agreement as requiring the Manager's approval.

1.03 Independent Contractor. The Consultant is an independent contractor retained to perform services for limited periods of time. Neither the Consultant nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

1.04 Scope of Consultant's Authority. The Consultant shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. The Consultant is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. The Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

SECTION 2 – CONSULTANT’S SERVICES

2.01 General. The Consultant shall provide professional Program Management services as assigned by written Task Order, on an as-needed basis, in accordance with the terms and conditions of this Agreement. The City may provide project management, financial analysis or other services for projects in the Program, but desires management oversight of the overall Program and access to project management services on an as needed basis.

2.02 Anticipated Projects and Tasks. The City anticipates that the Program will include the Colorado Convention Center expansion project as well as other projects yet to be identified. Projects may be added or removed at the written direction of the Project Manager.

2.03 Professional Responsibility; Task Requirements.

- (a) 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 similar nature to the work described in this Agreement.
- (b) 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 and in compliance with applicable laws, statutes, codes, ordinances, rules and regulations, and industry standards.
- (c) All professional services or deliverables provided under this Agreement shall be adequate and sufficient for their intended purpose.
- (d) The Consultant shall prepare all documents as requested in a format that complies with all City, state and federal requirements. It shall be the Consultant’s responsibility to contact the reviewing agencies to determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though any responsible federal and state agencies have approved such documents.
- (e) The reports, studies and other products prepared by the Consultant under this Agreement, when submitted by the Consultant to the Manager and the user agency must represent a thorough study and competent solution as per usual and customary professional standards and shall reflect all skills applicable to the assigned Task Order.
- (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 employee, agent, consultant or subconsultant of the City.
- (g) 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.

2.04 Program and Budget.

- (a) Each task proposal provided pursuant to Section 2.07(b) will include a maximum fee for all work to be performed under that task proposal. The Consultant agrees to complete the task within the limits of the approved Task Order. Should the Work exceed such maximum fee, the Consultant agrees to complete the task at no additional cost to City and, in a manner acceptable to the City.

2.05 Coordination and Cooperation.

- (a) The Consultant agrees to perform under this Agreement in such a manner and at such times that the City or any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.
- (b) Coordination with the City and other involved agencies shall be a continuing work item for each Task Order. Coordination shall consist of regular progress and review meetings with the City, work sessions with the Project Manager, or other coordination as directed. If requested, the Consultant shall document conferences and distribute notes to the City.

2.06 Personnel Assignments.

- (a) The key professional personnel identified in **Exhibit C** will be assigned by the Consultant or its subconsultants to perform the services required under this Agreement, as appropriate.
- (b) The Consultant's services shall be diligently performed by the regular professional and technical staff of the Consultant. In the event the Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with City approval, by practicing professional consultants outside of the employ of the Consultant.
- (c) The Consultant agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to through subconsultants, personnel in sufficient strength to meet the requirements of the City. Such personnel shall be of the classifications referenced in **Exhibit B**. The hourly rates specified therein include all costs except those specifically referenced as reimbursables in the appropriate hourly rate schedule or authorized in advance by an executed Task Order.
- (d) Prior to designating an outside professional to perform subconsultant work, the Consultant shall submit the name of such subconsultant, together with a resume of training and experience in work of like character and magnitude of the task being contemplated, to the City and receive prior approval in writing.
- (e) It is the intent of the Parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that the Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.
- (f) If the Consultant or a subconsultant decides to replace any of its key professional personnel, the Consultant shall notify the Manager in writing of the desired change. No such changes shall be made until replacement personnel are recommended by the Consultant and approved in writing by the Manager, which approval shall not be unreasonably withheld.
- (g) If, during the term of this Agreement, the Manager determines that the performance of approved key personnel or a subconsultant is not acceptable, the Manager shall notify the Consultant and give the Consultant the time which the Manager considers reasonable to correct such performance. Thereafter, the Manager may require the Consultant to reassign or replace such key personnel. If the Manager notifies the Consultant that certain of its key personnel or a subconsultant should be replaced, Consultant will use its best efforts to replace such key personnel or a subconsultant within ten (10) days from the date of the Manager's notice.
- (h) Neither the Consultant nor any subconsultant shall have other interests which conflict with the interests of the City. Consultant shall make written inquiry of all of its subconsultants concerning the existence of a potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.
- (i) Actions taken by the City under this Article shall not relieve the Consultant of its responsibility for contractual or professional deficiencies, errors or omissions.
- (j) The Consultant shall submit to the Manager a list of any additional key professional personnel who will perform work under this Agreement within thirty (30) days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks which may be assigned. Such additional personnel must be recommended by the Consultant and approved by the Manager before they are assigned to a specific task under a Task Order.
- (k) The Manager shall respond to the Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the Manager receives the list of changes. If

the Manager or his designated representative does not respond within that time, the changes shall be deemed to be approved.

2.07 Basic Services.

- (a) The Consultant shall, under the general direction of and at the written request of the Manager, furnish experienced personnel to support the Program. Subject to an express, agreed upon limitation of such duties set forth in any approved Task Order for the particular task assigned to the Consultant under this Agreement, the Consultant agrees to perform all of the services and duties set forth in this Agreement in regard to each task to which it is assigned pursuant to a Task Order.
- (b) When directed by the Manager to perform a particular task, the Consultant shall prepare a task specific proposal in accordance with the scope or description of Work. A separate task specific proposal shall be prepared for each task for which the Consultant's services are required and shall set forth, at a minimum all of the following:
 - (1) The maximum fee for the Consultant's proposed services.
 - (2) Itemized fee breakdown.
 - (3) The additional services budget, if any, for the task.
 - (4) Any reimbursable expenses approved pursuant to paragraph 3.02.
 - (5) A detailed description of the task and scope of work (the "Work").
 - (6) A list of deliverables for the task.
 - (7) An agreed upon schedule for deliverables and completion of the Work.
- (c) Upon approval by the Manager of a task proposal, the approval and appropriation of funding for the Work, the written approval of a Task Order, and the issuance of a written Notice to Proceed, the Consultant shall proceed to perform the Work.
- (d) The assigned task shall be performed in conformance with the approved Task Order. The terms of this Agreement cannot be altered by Task Order.
- (e) The Consultant's basic services for each task may consist of any one or combination of the anticipated services described in **Exhibit A** or services in a task specific proposal provided pursuant to Section 2.07(b).
- (f) The Consultant shall obtain written authorization from the City in the form of a Notice to Proceed before proceeding with each assigned task.
- (g) Nothing in this Agreement shall be construed as placing any obligation on City to proceed with any task beyond the latest task authorized in a Task Order. Further, nothing in this Agreement shall be construed as guaranteeing the Consultant any minimum amount of Work or number of tasks assigned under this Agreement.
- (h) If a task which is assigned to the Consultant under this Agreement is funded in whole or part by federal funds, or any other funding source, each of the applicable terms set forth in any funding arrangement for such funds shall be, and by this reference are incorporated into the Task Order for the task, and included in the Consultant's basic services responsibilities for the task.
- (i) 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, subconsultant, or employee of the City.

SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING

The City shall compensate the Consultant for its services performed and expenses incurred under this Agreement and each Task Order as follows.

3.01 The City agrees to pay the Consultant, as compensation for any services rendered for a particular task, either the maximum fee, to be set forth in each approved Task Order, or an amount based on the Consultant's periodic invoices, whichever is less.

3.02 Reimbursable Expenses. Unless expressly authorized by the City as part of an approved Task Order or specified in **Exhibit B**, the City will not compensate the Consultant for expenses such as postage, travel, mileage, parking, telephone, copies or messenger service costs incurred in connection with work performed under this Agreement. Such costs are included in the hourly rates paid by the City. The inclusion of rates for expenses in a proposal attached to a Task Order does not authorize reimbursable expenses unless the executed Task Order includes a not to exceed maximum amount for reimbursable expenses.

3.03 Additional Services. The Consultant shall only be compensated for additional services if the additional services are approved in advance by written amendment to an existing Task Order and subject to an additional services budget for that specific Task Order and subject to funds appropriated for the amendment.

3.04 Invoices. The Consultant shall invoice and be paid monthly in proportion to the progress of the Work on each assigned Task Order. Such invoices shall reflect the Consultant's actual hours, sub-consultant costs and reimbursable costs, and shall be based on the hourly rates or other rates for services contained in **Exhibit B**. The rates contained in **Exhibit B** can be modified only by a written amendment executed in the same manner as this Agreement. The Consultant shall maintain contemporaneous hourly records of the actual hours worked by its personnel and subconsultants, records of all allowable reimbursable expenses, and records of expendable supplies and services as necessary to support any audits by the City, and shall bill the City monthly for fees and costs accrued during the preceding month. The Consultant's invoice shall be separated by Task Order. Upon submission of such invoices to the City Project Manager, and approval by the City, payment shall issue. Final payment to the Consultant, for each assigned Task Order, shall not be made until after all Work pursuant to such Task Order is performed and all deliverables are delivered.

3.05 Maximum Contract Amount.

- (a) It is understood and agreed by the parties hereto that payment or reimbursement of all kinds to the Consultant, for all work performed under this Agreement, shall not exceed a maximum of **NINE MILLION DOLLARS AND NO CENTS (\$9,000,000.00)**. In no event shall the maximum payment to the Consultant, for all work and services performed throughout the entire term of this Agreement exceed the contract maximum amount set forth above.

3.06 Appropriation and Funding.

- (a) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- (b) As of the date of this Agreement, no funds have been appropriated for this Agreement. Instead, it is the City's intent to appropriate the funds necessary to compensate the Consultant for the work it performs on any assigned task, at the time it executes each Task Order. The Manager or his designee, 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 on each Task Order.
- (c) 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 Task Order to exceed the amount appropriated for that Task Order is prohibited. In no event shall the issuance of any 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 Task Order are sufficient to cover the entire cost 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 Agreement, without the proper authorization for such work, and at the Consultant's own risk and sole expense, except as amended pursuant to Section 3.03.

SECTION 4 – TERM AND TERMINATION

4.01 Term. The term of this Agreement shall commence on **February 1, 2018**, and shall expire three years later, unless sooner terminated or extended by written amendment. The Consultant shall complete any Task Orders in progress as of the expiration date of this agreement and the term will extend until the work is completed or earlier terminated by the Manager. This Agreement may be extended at the City's sole discretion for an additional two years by written amendment.

4.02 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, in the sole discretion of 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 the City 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) 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 and services contemplated have been completed, or if the task is, for any reason, stopped or discontinued, the Consultant shall be paid only for the portion of work or services which has been satisfactorily completed at the time of such dismissal, termination, cancellation, postponement, revision or stoppage.
- (f) All documents relating to the work completed or partially completed shall be delivered by the Consultant to the City in the event of any dismissal, termination, cancellation, postponement, revision or stoppage.
- (g) In the event of any dismissal, termination, cancellation, postponement, revision or stoppage, the Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, assisting the City during a transition to another Consultant, if applicable.

SECTION 5 – COMPLIANCE WITH M/WBE REQUIREMENTS

5.01 This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 to 28-36 and 28-52 to 28-90 D.R.M.C. (the “M/WBE Ordinance”) and any Rules or Regulations promulgated pursuant thereto. The Consultant identified in its Proposal MBE and/or WBE firms with which it intends to subcontract under this Agreement, with a total participation level by such firms of **12%**.

- (a) Under § 28-72 D.R.M.C., the Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with its originally achieved level of MBE and WBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting MBEs or WBEs performing on this Agreement through change order, contract amendment, force account, or as otherwise described in § 28-73 D.R.M.C. The Consultant acknowledges that:
 - (1) It must establish and maintain records and submit regular reports, as required, which will allow the City to assess progress in achieving the M/WBE participation goal.
 - (2) If change orders or any other contract modifications are issued under the Agreement, the Consultant shall have a continuing obligation to immediately inform the Division of Small Business Opportunity (“DSBO”) in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases discussed in § 28-73, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.
 - (3) If change orders or other contract modifications are issued under the contract, that include an increase in scope of work of this Agreement, whether by amendment, change order, force account or otherwise which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an M/WBE at the time of contract award, such change orders or contract modification shall be immediately submitted to DSBO for notification purposes. Those amendments, change orders, force accounts or other contract modifications that involve a changed scope of work that cannot be performed by existing subconsultants or by the Consultant shall be subject to a goal for M/WBEs equal to the original goal on the contract which was included in the proposal. The Consultant shall satisfy such goal with respect to such changed scope of work by soliciting new M/WBEs in accordance with § 28-73, D.R.M.C., as applicable, or the Consultant must show each element of modified good faith set out in § 28-75(c) D.R.M.C. The Consultant shall supply to the director the documentation described in § 28-75-(c) D.R.M.C. with respect to the increased dollar value of the contract.
 - (4) Failure to comply with these provisions may subject the Consultant to sanctions set forth in the M/WBE Ordinance. Should any questions arise regarding specific circumstances, the Consultant must consult the M/WBE Ordinance or contact the Project’s City’s designated DSBO representative at (720) 913-1999.

SECTION 6 – GENERAL PROVISIONS

6.01 City’s Responsibilities.

- (a) The City will provide available information regarding its requirements for each task, including related budgetary information, and shall cooperate with the Consultant. However, the City does not guarantee the accuracy of any such information and assumes no liability therefore. The Consultant shall notify City in writing of any information or requirements provided by the City which the Consultant believes to be inaccurate or insufficient.

- (b) If the City observes or otherwise becomes aware of any fault or defect in the task or non-conformance with Contract Documents, it will give prompt notice thereof to Consultant.

6.02 Ownership of Documents.

- (a) The City shall have title and all intellectual and other property rights, in and to all phased and final documents and deliverables, and all data used in the development of the same, including all photographs, drawings, drafts, studies, estimates, reports, models, notes 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 task for which the Documents were created is executed or not. The Consultant shall identify and disclose, as requested, all such Documents to the City.
- (b) 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 and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.
- (c) 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.
- (d) 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.
- (e) The Consultant shall be permitted to retain reproducible copies of all of the Documents for their information and reference, and the originals of all of the Documents 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.

6.03 Taxes and Licenses. The Consultant shall promptly pay, when they are due, any taxes, license fees of whatever nature applicable to the work and services which it performs under this Agreement, and shall take out and keep current all required municipal, county, state or federal licenses required to perform its services under this Agreement. 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 cause any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations.

6.04 Consultant's Records / Examination of Records. Records of the Consultant's direct personnel, Consultant's sub consultants and records of reimbursable expenses pertaining to this Agreement shall be kept on a generally recognized accounting basis. 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.

6.05 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 subcontractor, 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.

6.06 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Consultant may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Consultant shall insert the foregoing provision in all subcontracts.

6.07 Insurance.

- (a) General Conditions. 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. 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 requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Consultant. 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. Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Consultant certifies that the certificate of insurance attached as **Exhibit D**, 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, Auto Liability and Excess Liability/Umbrella (if required), Consultant and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

- (d) Waiver of Subrogation. For all coverages required under this Agreement, with the exception of Professional Liability - if required, 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. Consultant shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. 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. 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. 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 Consultant executes this Agreement.
- (g) Commercial General Liability. 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. 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 (Errors & Omissions). Consultant shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- (j) Additional Provisions.
 - (1) For Commercial General Liability, the policies must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs are outside the limits of liability;
 - (ii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (iii) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
 - (2) For claims-made coverage:
 - (i) 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) Consultant shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Consultant will

procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

6.08 Indemnification.

- (a) To the fullest extent permitted by law, the Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of the Consultant or the Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.
- (b) Consultant's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.
- (c) Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered 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.

6.09 Colorado Governmental Immunity Act. The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

6.10 Contract Documents; Order of Precedence. This Agreement consists of Sections 1 through 6, which precede the signature page, and the following attachment, which is incorporated herein and made a part hereof by reference:

Exhibit A	Consultant's Scope of Work
Exhibit B	Consultant's Rates & Reimbursable Expenses
Exhibit C	Consultant's Key Personnel
Exhibit D	ACORD Insurance Certificate

In the event of an irreconcilable conflict between a provision of Sections 1 through 5 and the listed attachments, or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in descending order:

- Sections 1 through 6
- Exhibit D
- Exhibit C
- Exhibit B
- Exhibit A

6.11 When 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.

6.12 Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, 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. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

6.13 Conflict of Interest.

- (a) The Consultant has a continuing duty to disclose, in writing, any actual or potential conflicts of interest including work the Consultant is performing or anticipates performing for other entities on the same or interrelated tasks. In the event that Consultant fails to disclose in writing actual or potential conflicts, the Manager, in his sole discretion, may terminate the applicable Task Order or the Agreement.
- (b) The parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described herein, and the Consultant further agrees not to hire or contract for services with any employee or officer of the City which would be in violation of the Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.
- (c) The Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the 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 it has given the Consultant written notice which describes the conflict. The Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.
- (d) Consultants shall not use City resources for non-City business purposes. City resources include computers, computer access, telephones, email accounts, copiers, printers, office space and other City facilities and equipment. If, as a result of access to City resources or as a result of Consultant providing services pursuant to the Agreement, Consultant obtains information about potential City contracts before that information is publicly available, Consultant shall notify the City in writing. The City, in its sole discretion, will determine if Consultant obtained an unfair advantage and is therefore disqualified from proposing or bidding.

6.14 No Third Party Beneficiaries. 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 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.

6.15 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.

6.16 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 except as provided in the City's Prompt Payment Ordinance.

6.17 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 include, but not be limited to, geographic materials or Geographic Information Systems ("GIS") data owned by 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.

- (b) Consultant's Information. The Consultant understands 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.

6.18 Use, Possession or Sale of Alcohol or Drugs. The Consultant, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Consultant from City facilities or participating in City operations.

6.19 No Employment of Illegal Aliens to Perform Work Under the Agreement.

- (a) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").
- (b) The 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 the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- (c) The 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 subconsultant 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 the E-Verify Program.

- (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Consultant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
 - (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
 - (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.
- (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.

6.20 Disputes. All disputes between the City and Consultant regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by 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.

6.21 Survival of Certain Contract 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 termination of this Agreement, (by expiration of the term or otherwise), shall survive such 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."

6.22 Advertising and Public Disclosure. The Consultant shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without first obtaining the written approval of the Manager, which will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by the City. The Manager shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of the City, including without limitation the Mayor, the Manager, City Council or the Auditor.

6.23 Legal Authority. Consultant represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Consultant represents and warrants that he has been fully authorized by Consultant to execute this Agreement on behalf of Consultant and to validly and legally bind Consultant to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Consultant or the person signing the Agreement to enter into this Agreement.

6.24 Notices. Notices, concerning the termination of this Contract, notices of alleged or actual violations of the terms or conditions of this Contract, and other notices of similar importance, including changes to the person to be notified or their addresses, shall be made:

to the City: Executive Director of Public Works
201 West Colfax Avenue, Dept. 608
Denver, Colorado 80202

with a copy to: Assistant City Attorney
201 West Colfax Avenue, Dept. 1207
Denver, Colorado 80202

to the Consultant: TC Denver Development, Inc.
1225 17th Street, Suite 3050
Denver, Colorado 80202

All notices shall be in writing and provided by either personal delivery or certified mail, return receipt requested. All notices are effective upon personal delivery or upon placing the notice in the United States mail. The addresses may be changed by the Parties by written notice.

6.25 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.

6.26 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 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 signatories to the original Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

6.27 Electronic Signatures. 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.

[ELECTRONIC SIGNATURES FOLLOW]

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Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PWADM-201839614-00

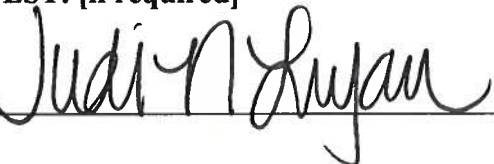
Contractor Name: TC DENVER DEVELOPMENT INC

By: 

Name: MICHAEL SULLIVAN
(please print)

Title: SENIOR VP
(please print)

ATTEST: [if required]

By: 

Name: Judi N Lujan
(please print)

Title: Notary
(please print)

JUDI N LUJAN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174015811
COMMISSION EXPIRES APR. 11, 2021



Exhibit A

Consultant's Scope of Work

Exhibit A – Scope of Work

Assumptions:

- (a) February 2018 Notice to Proceed
- (b) Contracts for all consultants, contractors and vendors will be held by the City.
- (c) Contract type to be Not to Exceed value with monthly invoicing with hourly back-up, submitted electronically to adam.phipps@denvergov.org.
- (d) Coordination with internal and external project stakeholders will be required.
- (e) Estimated Schedule assumes Design Program Verification thru Construction Documents February 2018 thru Early 2020. Construction Procurement, Pre-Construction, GMP and Construction thru Closeout Early 2018 through Late 2022.

Project Description:

The Colorado Convention Center Expansion Project includes expanding the Colorado Convention Center with features that focus on the quality and character of facility and experience, connectivity, flexible and unique spaces, and technology, all of which will help keep the Colorado Convention Center vibrant and attractive for years to come.

The Project includes design and construction and administration services for the vertical expansion of multi-purpose meeting and associated support space (roof top), renovation of existing lobby space, new vertical conveyances, and other required code & life safety upgrades. Scope of the project includes verification of programming, schematic design, design development, construction documents and construction through project completion. The Project scope for this On-Call Contract is focused on Opportunity 1 - Rooftop Expansion with Lobby and Wayfinding Improvements.

Scope of Services:

1. Notice to Proceed – February 2018
2. Program Management
Provide a Program Manager who will be responsible for the overall management of the scope of work performed by the Consultant and its sub-consultants, and successful development and implementation of Program Management and Program Controls as required by Public Works. Anticipated tasks may include but shall not be limited to:
 - a. Program and project organizational structure;
 - b. Program and project team responsibilities and reporting relationships;
 - c. Program management control of scope, schedule, cost, issue resolution and documentation;
 - d. Risk management;
 - e. Procurement procedures for services and construction;
 - f. Design process management;
 - g. Construction management;
 - h. Quality Assurance/Quality Control (QA/QC);
 - i. Safety and security certification;
 - j. Planning for operations testing, commissioning and start-up;
 - k. Right-of-way/Land acquisition;
 - l. Environmental assessment and mitigation; and
 - m. Inter-agency agreements;
 - n. LEED Certification oversight;

- o. Other duties as identified
3. Management Policies and Procedures
Anticipated tasks may include but shall not be limited to assure that design and construction complies with all requirements and commitments established during the planning and environmental clearance phase, as well as requirements of any other entities whose funds could be used to deliver the Program. Provide assistance in continued implementation of the following aspects of the Program and its component projects:
 - a. Updating of project work plans;
 - b. Manage the completion of the design, its integration and interface between members of the design team;
 - c. Program coordination and reviews by stakeholders;
 - d. Change control processes and policies;
 - e. Cost estimating guidelines and policies;
 - f. Program schedule development and updating requirements;
 - g. Document control procedures and policies;
 - h. Pre-bid contract document checklists;
 - i. Safety and Security certification program;
 - j. Risk and Vulnerability Assessment;
 - k. Conceptual operations for the identified projects; and
 - l. As required, update policies and procedures to fulfill the requirements of the PMP and assist Public Works staff in their implementation.
 - m. Other duties as identified

4. Program Implementation and Support Activities
Provide a Program Coordinator who will be responsible for providing the Program support activities outlined below and as required by Public Works.

Review program implementation plans, project phasing and contract packaging proposals prepared by the engineering design team and the Design/Build Team. Provide recommendations for optimization of program delivery as necessary.

Provide assistance in coordinating design teams responsible for the various project and contract package, including any Design-Build contracts, to ensure consistency in design and conformance to current design criteria.

Assist Public Works in coordination with regulatory agencies and other stakeholders that have an interest or are participants in the Program and facilitate resolution of issues related to design, construction and operations.

Establish a systematic risk management process for the Program and its component projects. Develop a framework by which these risks will be identified and assessed. Develop and implement response and control strategies to manage these risks.

Provide assistance to Public Works staff in managing and conducting Peer Review, Value Engineering, Constructability Review and other technical reviews as required.

Prepare procurement documents, including requests for qualifications, requests for proposals, boilerplate contract specifications and other contract documents as requested by Public Works to support procurement activities related to program implementation.

Provide contract compliance and administration as requested by Public Works, including maintaining contract records, performing invoice reviews, preparing independent cost estimates, and ensuring compliance with U.S. Department of Transportation and Public Works requirements and Public Works procurement and contracting policies and procedures.

As requested by Public Works, work with the City and County of Denver's City Attorney's Office to facilitate resolution of requests for additional compensation and/or time related to the performance of design and/or construction work.

Provide utility coordination oversight to ensure project teams are successful in making all arrangements for timely and cost-effective relocations of existing facilities.

Provide oversight and management of processes related to obtaining local, regional, state and federal permits required to complete the component projects, and ensure these requirements are met in a timely and efficient manner.

Update and maintain Construction Management Procedures, which cover construction, testing, commissioning and start-up phases of the Program.

Assist Public Works in project and Program close-out activities and documentation as requested.

5. Project Management

Provide a full-time project manager for the Program who will be responsible for managing the project scope, schedule and budgets during the design and construction phases as well as ensuring that all other aspects of the project, including environmental, real estate, utilities, permits and the parameters of the adopted schedule and budget.

Provide management for any Design-Build component(s) of the Program, including management of cost, schedule, quality, scope and integration with other project and contract packages.

6. Design Management

Ensure that the various design consultants consistently follow established procedures, use current design criteria and coordinate interface points between the various deliverables or contract packages. Ensure close communication of any changes to project design criteria or details so that changes approved for the project or Program are implemented consistently for all contract packages.

Maintain a design decision tracking system to assure timely decision-making. Perform comprehensive decision analyses as requested by Public Works. Facilitate and document major design decision processes.

Provide oversight of each design team member's construction administration responsibilities during construction to ensure that all approved changes are communicated to all impacted parties and are implemented consistently throughout Program, ensuring that all submittals and requests for information are handled in a timely manner.

Update and maintain a CADD database for the Program ensuring timely and efficient flow of consistent CADD documents and other design information among various design and construction management teams and Public Works staff. Update CADD procedures as requested by Public Works.

Organize independent reviews of design submittal packages to ensure that design intent is properly implemented, project scope is accurately represented in various contracts and QA/QC plans are effective.

7. Program Controls

Provide a Program Controls Manager to update, implement and manage Program and project controls.

Update the work breakdown structure (WBS) used in managing cost, schedule, scope and resources for the Program as requested by Public Works.

Update the Program master schedule regularly, but no less than monthly, to include current information regarding project and contract progress.

Develop and update project and contract package schedules based on input from various project team members, including designers and contractors. Provide current information regarding critical and near-critical activities, milestones, progress and outstanding issues affecting the schedule.

Review and analyze overall program progress during the design and construction phases. Review and analyze design and construction schedules for compliance with contractual and Program requirements. Identify areas of concern and provide input on corrective action plans as necessary.

Provide technical support in maintaining Program cost accounting. Develop, maintain and analyze budgets, track actual costs, analyze variances and forecast total Program costs.

Collect and analyze project and Program cost information, including encumbrances, commitments, actual expenditures and develop earned value, trends, forecasts and variance information.

Analyze, prepare and maintain current and projected cash flow requirements for the Program.

Identify and analyze funding opportunities. As requested, assist in preparing grant application and other funding proposals, in tracking expenditures, and fulfilling monitoring and reporting requirements.

Review and evaluate various cost estimates related to construction, operations and maintenance of the Program to ensure that they conform to established guidelines and accurately reflect all project-related costs.

Prepare independent cost estimates prior to advertising for bids as requested by Public Works. Prepare engineer's estimates from design cost estimates and analyze bid results for construction contracts. Develop independent cost estimates as requested by Public Works for construction contract change orders to be used as the basis for negotiation.

Develop and maintain a contingency management and tracking system.

Prepare monthly project and contract status reports outlining the progress, cost, schedule, status of QA/QC process, issue resolution and other aspects of the project or contract.

Advise Public Works staff on any necessary corrective actions relative to these aspects of the project. Prepare monthly reports of Program status for stakeholders, and assist City and County of

Denver's financial staff and financial consultant in preparing regular periodic reports requested or required by funders.

8. Quality Assurance/Quality Control (QA/QC) Program Procedures and Oversight

Update and maintain QA/QC program-defining standards for all design and construction activities associated with the Program.

Assist Public Works staff in performing reviews of QA/QC programs, procedures and plans proposed for the project by various design and construction teams to ensure these meet or exceed minimum Program standards.

Assist Public Works staff in oversight of design and construction activities relative to implementation of the adopted QA/QC program. Identify areas needing improvement, recommend corrective action plans and provide oversight to ensure compliance.

9. Document Management and Administrative Support

Provide administrative support to Public Works including, but not limited to, documentation of meetings, report writing, preparation of presentations, and preparation of correspondence.

Update and maintain a system of document management and control and change control functions to ensure that all program team members have current and accurate information available.

Manage the Program electronic document control database in the identification and retrieval of documents as required.

Provide administrative support to Public Works in responding to Public Records Act requests. Provide data, graphics and other materials as required by Public Works for internal, external and public presentation.

10. Management Information Systems (MIS) Support

Manage program/project controls and project management software tools to facilitate collection and management of information related to cost, schedule, scope, issue tracking, document control, contract administration, project status and other related activities.

Assist Public Works in the development, procurement, management and maintenance of Program hardware and software tools as requested by Public Works.

Exhibit B

Consultant's Rates & Reimbursable Expenses

Exhibit B - Rates and Reimbursable Expenses

CONSULTANT TEAM MEMBERS

PRIME CONSULTANT: Trammell Crow Company

List **ALL** potential firm personnel titles/classification that may be utilized under the Agreement, and their respective hourly rate. Do not list names of personnel, only titles (i.e. Project Manager).

Title/Classification	Responsibilities	Rate/Hr.
Principal-in-Charge	Provide management continuity from the beginning of the project through its completion.	\$400
Program Manager	Responsible for developing construction costs for the project utilizing our consultant base, incorporating value engineering and quality control, and supervising project management and project engineer support during construction phases.	\$300
Project Manager	Dedicated team member, assisting Principal-in-Charge and Program Manager on leading the team. Provide project accounting, coordination services, and is the lead in the day-to-day program.	\$250
Assistant Project Manager	Supports the day-to-day program with the Project Manager.	\$200
Program Controls Manager	Prepares financial models during the due diligence phase, which allows for draw preparation, cost variance analysis, forecasting and coordination of all accounting aspects of the project.	\$135
Program Coordinator	Provides marketing and administrative support for the project, including but not limited to supporting documentation, scheduling, and any related correspondence and materials.	\$100

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 1

All reimbursable expenses are subject to the review and approval of the City. The additional expenses of the Consultant reimbursable by the City shall include:

- (1) Mileage: Reimbursable at the current IRS Business Rate **ONLY** when Consultant is required to drive to a project located outside the City and County of Denver Boundary.
- (2) Actual cost of reproducing and printing reports, drawings, specifications and other work products, and the associated cost for shipping and handling. These reimbursable expenses pertain only to requests made to the Consultant from the City, and exclude intra-office printing, scanning and reproduction required by the Consultant to complete the work.
- (3) Actual cost 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.



Entitlement and Engineering Solutions, Inc.
2018 Hourly Rate Schedule

Category	Hourly Rate
President	\$158.00
Principal	\$152.00
Sr. Project Manager	\$146.00
Project Manager	\$141.00
Sr. Engineer V	\$136.00
Sr. Engineer IV	\$124.00
Engineer III	\$119.00
Engineer II	\$114.00
Engineer I	\$108.00
Engineering Intern	\$102.00
Project Scheduler	\$141.00
Designer	\$108.00
Sr. CAD Technician	\$102.00
CAD Technician	\$92.00
Administrative Support	\$70.00



Group14 Engineering, PBC

1325 E. 16th Avenue
Denver, CO 80218

2018 RATES

Position	Hourly Rate
Commissioning Team Leader	\$175
Sr. Project Manager	\$140
Project Manager	\$125
Commissioning Agent	\$110
Admin	\$75



NINE dot ARTS®

303.999.0383
www.ninedotarts.com

3457 Ringsby Court, #107
Denver, Colorado 80216

Rate Schedule

2018

PROPOSER:

NINE dot ARTS

Certification:

M/WBE City and County of Denver

PERSONNEL CLASSIFICATION

BILLING RATE PER HOUR

Principal

\$ 180

Curator

\$ 150

Senior Arts Administrator

\$ 150

Arts Administrator

\$ 120

Studio Assistant

\$ 120

Art Handler/Technician

\$ 120

Exhibit C

Consultant's Key Personnel



PRINCIPAL-IN-CHARGE

WILLIAM E. MOSHER
SENIOR MANAGING DIRECTOR
PH: 303.628.7439
M: 303.589.6137
E: bmosher@trammellcrow.com

As Senior Managing Director of Trammell Crow’s Denver office, Bill Mosher oversees the Company’s development and investment activities in Colorado. A native of Denver, he has more than 30 years of experience in both the public and private sectors of urban real estate.

Trammell Crow has developed and acquired over \$2 billion in Denver-area projects across all property types over the past decade. Bill joined Trammell Crow Company in March 2006, and has focused on industrial, office, retail, residential and health-care related projects. Projects include: Wellington Webb Municipal Office Building; Denver News Agency; Hyatt Regency at the Colorado Convention Center; University Physicians I and II at Fitzsimmons; 1900 16th Street; DaVita World Headquarters Building; Denver Union Station Multi-Modal Transportation Center; Denver Water Operations Complex Redevelopment; Denver Health & Hospital Authority (Medical Office Building and Support Services Building); Olde Town Arvada Transit Station; and Crossroads Commerce Park. Bill also serves as the CEO of the Denver Convention Center Hotel Authority.

Bill served as the President of the Downtown Denver Partnership (DDP) from 1990-1999. At the Partnership he helped guide Downtown Denver’s rebirth in the 1990s by advocating, planning, managing, promoting and developing central Denver, including forming the Business Improvement District (BID) and initiating a downtown housing development strategy culminating in redevelopment plans for the Central Platte Valley.

Bill continues to be heavily involved in community efforts, including Chair of the Board of Governors, Colorado State University; Chair of the Denver Civic Ventures Board at the Downtown Denver Partnership; and is a Member of the Colorado Forum. Bill has served as Chair of the Urban Land Institute Colorado Council; the Denver Housing Authority; and a Member of the Fitzsimmons Redevelopment Authority Board; as well as many industry-related, educational and civic speaking engagements.



PROGRAM MANAGER

MICHAEL SULLIVAN
SENIOR VICE PRESIDENT – DEVELOPMENT MANAGEMENT
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Mike joined Trammell Crow Company in March 2006 as the Vice President Development Management, responsible for development, management and construction management. He is a veteran of all aspects of construction management and design-build. Mike is a Civil Engineer from the United State Military Academy, and has extensive civil design and construction

experience within the Corps of Engineers. Mike has built roads, bridges, airfields, drainage structures, and ports. Mike also has designed and installed electrical distribution facilities, domestic water supply systems, and sanitary waste collection and processing systems.

Mike, along with Bill Mosher, formed Mosher Sullivan Development Partners in 2003 after a nearly 20-year career in construction management in Colorado and worldwide through his service in the US Army Corps of Engineers. He managed all design and construction processes including the design-build process for the 308,000 square foot Denver Newspaper Agency headquarters building in downtown Denver. Recent noteworthy projects: Denver Union Station Multimodal Transportation Center, Denver Health Pavilion M, Ralph L. Carr Colorado Judicial Complex, DaVita Headquarters Building, Colorado History Center, and 1900 16th Street in Lower Downtown Denver.



PROJECT MANAGER

FREDERICK SCHULTZ, RA, LEED AP
SENIOR DEVELOPMENT MANAGER
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Fred has a diverse portfolio of experience in both the public and private sectors with a variety of building types and sizes. In addition to his experience as a project architect, he brings proven project management and team management skills to large-scale projects and has extensive experience with high-rise, urban, office and hospitality projects.

Fred joined Trammell Crow Company in September, 2007 as Senior Development Manager. His responsibilities include direction of design/construction teams, owner’s representation and general project management. His current duties include the management of the \$260 million, Ralph L. Carr Colorado Judicial Center. Prior to joining Trammell Crow, Fred was a partner in the Denver architectural firm of Newman, Cavender & Doane. While there, he was responsible for all aspects of technical design and project delivery. He was also Project Manager for the Denver Newspaper Agency building.

Fred is a registered architect with over 30 years of practice. He is particularly strong in a design/build environment having acted as Project Manager on design/build projects such as Colorado’s Ocean Journey, the Wellington Webb Office Building, Denver Newspaper Agency office building, Hard Rock Hotels/and Casinos in Tampa and Hollywood, Florida, Omni Interlocken Hotel and the renovation of the Curtis Hotel.



ASSISTANT PROJECT MANAGER

DAVID H. SMITH
SENIOR ASSOCIATE
PH: 303.628.1730
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E: dhsmith@trammellcrow.com

David Smith serves as the Senior Associate for Trammell Crow’s Denver Business Unit, where he supports the leadership team in managing all aspects of the development process, including sourcing new development projects, securing debt and equity, maintaining client relationships, and helping to manage the zoning, permitting, planning, financing, construction and sales processes.

David has over 12 years of experience in varied aspects of commercial real estate including lending, private equity acquisitions and joint venture investment, asset management, and development. David has played an integral role in over \$1 Billion in financing, acquisitions, joint venture investment, and dispositioning of residential, office, retail, hospitality, mixed-use, and land properties through over 20 transactions across the U.S. and Caribbean.



PROGRAM CONTROLS MANAGER

ROB ANDREWS
FINANCE MANAGER
PH: 303.628.1718
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Rob Andrews plays an integral role in financial modeling for Trammell Crow’s Denver Business Unit. Rob’s involvement with preparation of each project’s financial models during the due diligence phase is critical. This in turn develops into draw preparation, cost variance analysis, lien release and insurance tracking, forecasting and coordination of all accounting aspects of each project through its completion.

Exhibit D
(ACORD Insurance Certificate)



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
01/12/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. Stamford CT Office 1600 Summer Street Stamford CT 06907-4907 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105		
	E-MAIL ADDRESS:		
INSURED CBRE Group, Inc. and Subsidiaries 400 S Hope Street Los Angeles CA 90071 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Zurich American Ins Co		16535
	INSURER B: ACE Property & Casualty Insurance Co.		20699
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

Holder Identifier :

COVERAGES **CERTIFICATE NUMBER:** 570069936586 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			GL0838419915	03/01/2017	03/01/2018	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$50,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			G27952501002	03/01/2017	03/01/2018	EACH OCCURRENCE	\$8,000,000
							AGGREGATE	\$8,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			wc838419518 All other States wc914173611 Wisconsin	03/01/2017	03/01/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
A					03/01/2017	03/01/2018	E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000

Certificate No : 570069936586

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
TC Denver Development, Inc. is included as Additional Named Insured. RE: Colorado Convention Center Expansion Project. The City and County of Denver, its Elected and appointed officials, employees and volunteers are included as Additional Insured in accordance with the policy provisions of the General Liability policy.

CERTIFICATE HOLDER**CANCELLATION**

City & County of Denver Department of Public Works Attn: Jill Ferguson 201 West Colfax Avenue, Suite 614 Denver CO 80202 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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