

## ON-CALL ENGINEERING SERVICES AGREEMENT

**THIS AGREEMENT** entered into, between the **CITY AND COUNTY OF DENVER** (the "City"), a municipal corporation of the State of Colorado, and **DAVID EVANS AND ASSOCIATES INC.**, a Oregon corporation registered to do business in Colorado, whose address is 2100 S River Parkway, Suite 100, Portland, OR 97201 (the "Consultant"), jointly "the Parties".

### RECITALS:

1. The City, through its Department of Transportation and Infrastructure seeks "readily available" professional engineering services and related technical services to support the Department's Implementation Division on an "as needed" basis, and

2. The Consultant represents that its members include a duly licensed engineer of the State of Colorado, and that the Consultant has the present capacity, experience and qualifications to perform professional engineering services for the City in connection with the planning, design and construction of various City projects, as specified in this Agreement; and

3. In response to the City's Request for Qualifications and Proposal, the Consultant submitted a Proposal for such services to the City. The Consultant and the City have negotiated a Scope of Services and Rate Sheet for such professional services, a copy 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 engineering 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 Authority. The City's Executive Director of The Department of Transportation and Infrastructure ("Director") is the City's representative responsible for authorizing and approving the work performed under this Agreement. The Director hereby designates the City Engineer as the Director's authorized representative for the purpose of designating a Project Manager, for the purpose of issuing a written Notice to Proceed and for purposes of administering, coordinating and finally approving the work performed by the Consultant under this Agreement. The Project Manager shall be responsible for the day-to-day administration, coordination and approval of work performed by the Consultant, except for approvals which are specifically identified in this Agreement as requiring the Director's approval. The Director expressly reserves the right to designate another authorized representative to perform on the Director's behalf by written notice to the Consultant.

1.03 Independent Contractor. The Consultant is an independent contractor retained to perform professional or technical 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 engineering services for any assigned project, on an as-needed basis, in accordance with the terms and conditions of this Agreement.

2.02 Professional Responsibility; Project 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 nature similar 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 further agrees to design and engineer each project in compliance with applicable laws, statues, codes, ordinances, rules and regulations, and industry standards.
- (c) All professional services, plans and specifications and other work, or deliverables provided under this Agreement for the Project shall be adequate and sufficient for the proper construction of the Project and its intended purpose.
- (d) All drawings, specifications and other products shall be prepared so that the Project, when constructed in accordance with such drawings and specifications, is in compliance with all applicable laws, statutes, codes, ordinances, rules, regulations and executive orders of the City, state and federal government.
- (e) Any design changes required by changes in such applicable laws, statutes, codes, ordinances or rules and regulations of the City, state or federal government, which are enacted after the City's acceptance of Construction Documents, will be outside the scope of the Consultant's basic services and basic fee, and will be compensated for approval as an additional service, subject to the additional services budget for that project.
- (f) The Consultant shall prepare the plans, specifications and other materials for the Project in a format that complies with all City requirements as well as all state and

federal requirements for the Project. No funds will be paid to the Consultant for the preparation of contract documents in a form other than that considered usual and customary by the Department of Transportation and Infrastructure. It shall be the responsibility of the Consultant to contact the reviewing agencies and 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.

- (g) The City reserves the right to proceed with the construction of each project using either the City's standard general contractor bidding approach, on call contractors or other construction management techniques. The Consultant agrees to organize its Contract Documents for the selected construction technique and coordinate the documents into selected bid packages, as appropriate. The City will notify the Consultant prior to the completion of the Preliminary Design Phase which method will be used and the amount of work or the limits of construction to be included in the proposed bid package(s).
- (h) The reports, studies, drawings and specifications and other products prepared by the Consultant under this Agreement, when submitted by the Consultant to the Director and the user agency for any identified phase of a project, must represent a thorough study and competent solution for the project as per usual and customary professional standards and shall reflect all architectural and engineering skills applicable to that phase of the project.
- (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 or subconsultant, or an employee of the City.
- (j) 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.

2.03 Program and Budget. The Consultant agrees to review the City's program and budget for each assigned project with the Project Manager and further agrees to timely notify the City in writing if Consultant becomes aware that the project cannot be accomplished within such budget.

2.04 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 through all phases of each assigned project. Such coordination shall consist of regular progress and review meetings with the City, work sessions with the City's

The Department of Transportation and Infrastructure, and other user agencies or as otherwise directed by the City. Such coordination may also include field and office reviews of plans and documents as required during the development of the design for any specific project. The Consultant shall document all such conferences and distribute notes to the City.

2.05 Personnel Assignments.

- (a) The key professional personnel identified in **Exhibit B** 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 outside subconsultants, professional design personnel and technicians in sufficient strength to meet the requirements of the City. Such personnel and technicians 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.
- (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 project 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 Director 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 Director, which approval shall not be unreasonably withheld.
- (g) If, during the term of this Agreement, the Director determines that the performance of approved key personnel or a subconsultant is not acceptable, the Director shall notify the Consultant and give the Consultant the time which the Director considers reasonable to correct such performance. Thereafter, the Director may require the

Consultant to reassign or replace such key personnel. If the Director 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 Director's notice.

- (h) Neither the Consultant nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on a project to which they may be assigned, and the 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 Director 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 Director before they are assigned to a specific project.
- (k) The Director shall respond to the Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the Director receives the list of changes. If the Director or his designated representative does not respond within that time, the changes shall be deemed to be approved.

#### 2.06 Basic Services – General.

- (a) The Consultant shall, under the general direction of and at the written request of the Director, furnish experienced engineering personnel to support the Department's existing personnel. Subject to an express, agreed upon limitation of such duties set forth in any approved project proposal for the particular project 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 project to which it is assigned, and its proposal is approved.
- (b) When directed by the Director to perform under this Agreement on a particular project, the Consultant shall prepare a project specific proposal in accordance with the provided scope or description of Work for that project. A separate project specific proposal shall be prepared for each project for which the Consultant's services are required and shall set forth, at a minimum all of the following:
  - (1) A not to exceed maximum fee for the Consultant's services.

- (2) The surveying, utility locating and testing budget for the project if applicable.
  - (3) The additional services budget, if any, for the Project.
  - (4) The budget for reimbursable expenses if applicable.
  - (5) A description of the project and requested scope of work (the “Work”).
  - (6) An agreed upon schedule for the Consultant’s performance.
  - (7) For all work Consultant shall include estimated hours and rates per the contract rate schedule and classifications.
- (c) Upon approval by the Director of a project proposal, the approval and appropriation of funding for such project, and the issuance of a written Notice to Proceed, the Consultant shall proceed to perform required Work.
  - (d) The assigned Work shall be performed in conformance with the approved project specific proposal upon approval of the Proposal.
  - (e) The Consultant's basic services for each project to which it is assigned may consist of any one or combination of the phases described below and shall include, but are not limited to the civil, structural, mechanical, and electrical engineering and testing services appropriate to each phase of each project and the services described in **Exhibit A**.
  - (f) The Consultant shall obtain written authorization from the City before proceeding with each phase of each assigned project.
  - (g) Nothing in this Agreement shall be construed as placing any obligation on City to proceed with any phase beyond the latest phase authorized in writing by City for each assigned project. Further, nothing in this Agreement shall be construed as guaranteeing the Consultant any minimum amount of Work or number of projects assigned under this Agreement.
  - (h) If a project which is assigned to the Consultant under this Agreement is funded in whole or part by federal funds, each of the applicable terms set forth in any funding arrangement for such funds shall be, and by this reference are incorporated into the project specific proposal for such project and included in the Consultant's basic services responsibilities for such project.
  - (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.

2.07 Basic Services - Phase Specific. All of the services described in this Section 2.07, unless specifically noted as omitted in the project specific proposal for a specific project, are included in the Consultant Basic Fee for each project to which the Consultant is assigned.

(a) Programming and Investigation Phase:

- (1) The Consultant shall attend such conferences as may be required for a complete understanding of each project, and the Consultant shall document all such conference notices and distribute minutes of such conferences to the City.
- (2) If construction, design or document standards have been adopted by the City, the state, or the federal government for the Project, the Consultant shall comply with all such standards when applicable.
- (3) The Consultant shall perform all additional research or investigation it deems necessary to ensure a complete understanding of the project.
- (4) The Consultant shall review the needs and requirements of the City and affected agencies to determine the specific requirements of the specific project based on the information provided by the City.
- (5) The Consultant shall then review the project requirements with the City to confirm its understanding of the project, budget and any applicable limitations.
- (6) Upon approval of such costs by the City, and subject to the surveying, utility locating and testing budget for the specific project, the Consultant shall obtain all plats, special studies and engineering data necessary to properly investigate and report on the project.
- (7) The Consultant shall then, through a written report and informal presentation, review with the City alternate methods or approaches to the design and construction of the project and recommend those methods or approaches best suited to program needs and budget of the City.
- (8) The Consultant shall also include as part of this phase all services included in the applicable portions of the approved project specific Proposal.

(b) Schematic Design Phase:

- (1) The Consultant shall not begin work on the Schematic Design Phase of any project unless and until written notice to proceed with such phase is received from the Project Manager.

- (2) During the Schematic Design Phase for each project, the Consultant shall, in response to the City's requirements, the budget restrictions of the project and the format of design and construction selected by City, prepare for the City's approval schematic design documents including, but not limited to, drawings and other documents demonstrating and illustrating the scope and scale of the project and the relationship of the project components. Such documents shall be in sufficient detail so as to allow the City to make knowledgeable and informed decisions as to the selection of alternates and resolution of other scope and budget questions.
  - (3) The Consultant shall also provide a preliminary Statement of Probable Construction Cost of the project, taking into account the City's project budget.
  - (4) The Consultant shall also include as part of this phase all services included in the applicable portions of the approved project specific Proposal.
- (c) Design Development Phase:
- (1) Prior to beginning the Design Development Phase of each project, the Consultant shall obtain written approval of its final Schematic Design Documents and the Statement of Probable Cost.
  - (2) The Consultant shall prepare Design Development Documents based upon the approved schematic design documents and any adjustments in the program and budget authorized by the Director.
  - (3) The Design Development Documents shall include but not be limited to sufficient data, information and material to define the scope of the project and to demonstrate the general design of the project, including the size and character of the project as to architectural, civil, structural, mechanical and electrical systems, materials, and any other project elements appropriate under each project scope and design.
  - (4) As required, the Consultant shall prepare Design Development drawings which shall include but not be limited to:
    - (i) Drawings which show existing topographic features and improvements affecting or relating to the proposed project. The Consultant shall indicate revisions to be made to existing topographic features and improvements such as grading and construction of drainage facilities. Where drainage facilities are to be provided, the Consultant shall indicate direction of flow and point of discharge by appropriate symbol or notes.



- (ii) Drawings setting forth the basic information necessary to establish space requirements and functional arrangement.
  - (iii) Drawings which demonstrate the functional layout of mechanical, electrical and electronic features, special equipment and, plumbing and heating, where applicable.
  - (iv) Drawings demonstrating the location, dimension, sections, areas and capacities applicable to parking areas, access roads, driveways, walks, and similar features.
  - (v) Drawings demonstrating the location and size of existing or proposed storm or sanitary sewers, water mains, gas main and electrical services as needed for the construction of the project, as well as elevations of gravity lines and the location of proposed building connections with notations showing which of the necessary utility extensions or connections will be provided by others.
  - (vi) Drawings showing simplified schematic electrical diagrams for each electronic or instrumentation system for any required system functions.
- (5) The Consultant shall also prepare preliminary specifications. The Consultant must ensure that existing standard details and technical specifications for specific requesting agencies are strictly followed. Alteration and editing of existing standards is not acceptable. Project specific alterations which are necessary to existing standards must be addressed using revision sheets.
  - (6) The Consultant shall provide a proposed project time schedule, including key dates and milestones.
  - (7) The Consultant shall then prepare a Statement of Probable Construction Cost which shall be calculated by the Consultant to a uniform and detailed level, based on the drawings and the preliminary specifications for this phase of the project, reflecting the probable project construction costs and taking into account the building trades and construction components utilized in the project design.
  - (8) The Consultant shall provide, as part of this phase, all services included in applicable portions of the approved project specific Proposal.
- (d) Construction Documents Phase:
- (1) Prior to beginning the Construction Documents Phase, the Consultant shall obtain acceptance in writing of the Design Development Documents and the accompanying Statement of Probable Construction Cost. Upon acceptance by the City, in writing, of the Statement of Probable

Construction Cost, such statement shall become the City's Final Budget for Project Construction. Acceptance of the Design Development Documents shall not be construed as approval of the adequacy of the Design Development Documents and shall not relieve the Consultant of any liability for any defaults, deficiencies, errors or omissions contained therein.

- (2) The Consultant shall prepare the Construction Documents from the approved Design Development Documents and by incorporation of any further changes authorized by the City and agreed to by the Consultant. The Construction Documents shall set forth in detail the requirements for the completion of the entire project. At a minimum, these documents must include complete information necessary to bid the project, and shall contain complete bidding documents meeting all City and, as applicable, state and federal requirements.
- (3) The Construction Documents shall include, but not be limited to, complete drawings and specifications setting forth the requirements for the completion of the project in adequate, reasonable, reliable and final detail.
- (4) The Consultant shall file all documents necessary and required for the approval of the project design by governmental authorities having jurisdiction over the project. The City will lend any required assistance, such as signing application(s) and paying any permit or other fees.
- (5) Acceptance of the Construction Documents shall not relieve the Consultant of any responsibility for design deficiencies, omissions or errors.
- (6) All final plans and specifications shall bear the signature(s) and seal(s) of Consultant and/or the responsible subconsultant, in conformity with the requirements of Articles 4 and 25 of title 12, C.R.S. It is intended by the parties that the Construction Documents, including all plans and specifications, will be signed and sealed, in whole or in part as appropriate, by the licensed professional engineer and/or architect in responsible charge of the preparation of such plans and specifications or parts thereof. The Consultant shall be ultimately responsible for all design work provided under this Agreement.
- (7) The Consultant shall make available for review, by the City, all design data forming the basis for drawings and specifications.
- (8) The Consultant shall provide a list of long lead items to the City's Project Manager.
- (9) The Consultant shall provide the City with a Final Statement of Construction Cost based upon the submitted Design Documents for the City's consideration.

- (10) The Consultant shall also include as part of this phase all services included in the applicable portions of the applicable approved project specific Proposal.
- (11) If the Cost estimate indicates a budget shortfall, the Consultant shall assist the City by identifying items that could be bid as add alternates and identifying those items on the construction documents.

(e) Bidding Phase:

- (1) Prior to beginning the Bidding Phase of the project, the Consultant shall obtain the City's acceptance, in writing, of the Construction Documents. Such acceptance shall not be construed as approval of the adequacy of the Construction Documents.
- (2) The time schedule for work under this phase shall be governed by the times shown in the printed project bid package(s), as modified by any addenda. During this phase, the Consultant's duties shall include, but not be limited to:
  - (i) Preparing and submitting the project documents, bid documents, and the invitation for bids for the written acceptance of City prior to the advertising by the City and solicitation of bids. Such acceptance shall not be construed as approval of the adequacy of the documents and shall not relieve the Consultant of the responsibility for design deficiencies, errors, or omissions.
  - (ii) Preparation and submittal to the City of a tentative pre-bid project schedule, in a form approved by the City, in sufficient detail to show the major completion milestones required by the City, and appropriate to the size, complexity and scope of the project.
  - (iii) Providing the City with bid documents in accordance with the format required by the City.
  - (iv) Assist the Project Manager with answering questions by bidders and approving "equals" to specified materials. Lists of those materials approved as equals shall be prepared as an addendum item, with explanatory notes if necessary.
  - (v) Assist the Project Manager with the preparation of any necessary addenda.
  - (vi) Participating in the pre-bid conference with prospective bidders;

- (vii) Reviewing all bids for the reasonableness of the bid price and the qualifications of the lowest responsive bidders; and
- (viii) Performing all services included in the applicable portions of the applicable approved project specific Proposal.

(f) Construction Administration Phase:

- (1) The Construction Administration Phase shall commence with execution of the Construction Contract(s) and the issuance of the Notice to Proceed to the Project Contractor(s), or the first of them, by the City.
- (2) The time schedule for Consultant's Work under this phase shall be set and governed by the approved project schedule. However, the Consultant's schedule for this phase may be changed due to project change orders or due to time extensions to such schedule and will in any event be extended until all project documents (original and record drawings, specifications, test reports, surveying notes, design calculations and other pertinent information) have been received by the City and the final payment for services is paid. No additional compensation will be paid to the Consultant because of extensions of the Contractor's period of performance or other performance schedule revisions.
- (3) The Consultant shall attend Owner, Architects, Contractor (OAC) meetings when requested by the Project Manager. The Consultant may be called upon to assist with procedures, job progress, construction problems, scheduling or other matters relating to the timely and successful completion of the project in accordance with the contract requirements.
- (4) Consultant shall keep the City informed through a monthly written report of the progress and quality of work.
- (5) If, in the Consultant's opinion, the Contractor has fallen behind schedule, the Consultant shall immediately notify the Project Manager. If the Contractor refuses or fails to prosecute the work, or any part thereof, with such diligence as will ensure its completion within the time specified in the Contract Documents, or any extension thereof, or fails to complete said work within such time, or refuses to correct defective work, the Consultant shall immediately notify the City and recommend a course of action.
- (6) The Consultant will assist the City Project Manager with interpreting the requirements of the Project Plans and Specifications. The Consultant will render written interpretations within ten (10) days of receipt of any written request or within an agreed upon time limit.

- (7) The Consultant shall notify the City's Project Manager of unacceptable work which, in the Consultant's opinion, does not conform to the Contract Documents. The Consultant shall review and approve all shop drawings, samples and other required submissions of the Contractor in a timely manner. Such general submissions shall be approved for use on the project only if, and when, the Consultant has ascertained that they are in conformance with the design concept of the project and in compliance with contract documents. Submissions of Contractor(s) shall be acted on and returned to the Contractor within ten (10) days of receipt thereof. If review and return are delayed beyond the time set out above, the Consultant shall notify Contractor and City of such delay, in writing, before expiration of the approval date, stating the reason for the delay. Resubmittals shall be acted on and returned to Contractor within five (5) days. The Contractor shall submit to the City Project Manager and Consultant prior to the beginning of construction, a schedule of submittals. No shop drawing or submittal will be approved prior to the receipt of the submittal schedule.
- (8) The Consultant shall review and analyze all written requests for Change Orders, including any documents offered to substantiate such requests. The Consultant shall submit written recommendations to the City concerning all requests for Change Orders.
- (9) All change orders shall be on forms supplied by the City. The Consultant shall keep a current record of all variations or departures from the drawings and specifications as originally approved and shall maintain careful supervision over all changes in final drawings in the course of the work.
- (10) The City will transmit a copy of all completed change orders to the Consultant for use in checking shop drawings and compiling record drawings for project construction.
- (11) The Consultant shall use reasonable efforts and professional judgement to ensure that no changes are made in the work, by any party, without prior written consent of the City except as hereinafter provided. Only the City may authorize changes in the work.
- (12) The Consultant shall observe and systematically review the performance of the work or in such a manner and at such times as is necessary to determine that the work has been or is being installed in conformance with the Contract Documents. If any work is not in conformance with the Contract Documents, the Consultant shall immediately make an oral report of such nonconformance to the City Project Manager, followed by a written report of such nonconformance to both the nonconforming Contractor and the City. The Consultant, however, does not assume and is not responsible for any of the Contractor's construction means, methods, techniques, or safety programs in constructing the project. The on-site visits by the Consultant

shall be made by members of the appropriate engineering or architectural discipline according to the status of the work and may vary with the progress of work from daily to weekly. The frequency of on-site visits shall be that which the Project Manager considers necessary to safeguard the interests of the City through a determination that the Work is being performed in compliance with the Contract Documents, and with applicable laws, statutes, codes, ordinances, rules and regulations and standards.

- (13) On each visit to the site, the Consultant shall make, and file within seven (7) days with the City, a written field observation report using the form(s) approved by the Project Manager for each individual project.
- (14) If the Consultant knows or reasonably should have known that the Contractor or any subcontractor fail to comply with the Contract Documents, drawings, specifications, designs and plans prepared by the Consultant, the Consultant shall report such failure to the City's project manager immediately. The Consultant shall notify the Project Manager of specific critical observations it intends to carry out during the various phases of the project.
- (15) If the Consultant becomes aware of any condition or event constituting a material default by the Contractor or that otherwise justify termination of a Contractor for cause, the Consultant shall notify the City immediately.
- (16) Upon the completion of the entire work or a designated portion thereof, the Consultant shall, in consultation with the City, recommend issuance of a Certificate of Substantial Completion in accordance with the provisions of the construction contract and its General and/or Special Contract Conditions. The referenced document will be issued by the City.
- (17) The Consultant shall, in consultation with the City, provide to the City a close-out program, including a comprehensive process to ensure timely, efficient and proper completion of all punch list items by the Contractor in accordance with the provisions of the Contract Documents.
- (18) "Record Drawings" shall be defined as a revised set of drawings submitted by a consultant or contractor upon completion of a project or a particular job that reflect all changes made in the specifications and working drawings during the construction process, and locations of all elements of the work completed under the contract. Record Drawings may also be referred to as as-built drawings or just as-builts.

Prior to Final Inspection, the Consultant shall obtain the original "Marked-up As Built" drawings and final survey, if applicable, as well as a conformed copy of the Project Specifications from each Contractor. Based on these documents, the Consultant shall prepare, as necessary, and deliver to the Project Manager Record Drawings and a conformed copy of the Project

Specifications showing all changes made during construction. Such Record Drawings shall reflect all known modifications to the original drawings and shall be made from the "Marked-up As Built" sets of drawings prepared by Contractor. The Record Drawings shall incorporate the Consultant's observations, shall be made in a professional manner and shall be stamped and signed by the Consultant as being Record Drawings. These drawings shall be delivered on a CD in PDF and DWG format to the City Project Manager, together with all of the "Marked-up As Built" prints provided by the Contractor(s) from which they were derived. If requested by the City, the unstamped reproducibles shall be transmitted to the City with a letter, sealed by the Consultant, stating that as of the date of such transmittal, the reproducible drawings are identical to the Record Drawings except for such seals and stamping. The last five percent (5%) of the Consultant's basic services fee for each project will not be paid until such Record Drawings and all Record Documents are received.

- (19) The Consultant shall attend the Final Inspection with the Contractor and the City to ascertain that all work performed by the Contractor has been performed in accordance with the Contract Documents. At the time of such Final Inspection, a final punch list shall be agreed to by the Consultant and the City, and made in sufficient detail to fully outline to the Contractor: (1) any work to be completed; (2) any work not in compliance with the drawings or specifications; and (3) any unsatisfactory work.
- (20) Prior to final payment to the Contractor, the Consultant shall review final punch list work and shall prepare a written report outlining the deficient or outstanding work and making recommendations as to the ultimate disposition of such outstanding Work.
- (21) One month prior to the expiration of the warranty or other correction of work period provided for in the General and/or Special Contract Conditions to the Contract Documents, the Consultant shall inspect the project for any deficiencies that may have become apparent. Upon completion of such inspection, a written report of the inspection shall be furnished to the City.
- (22) The Consultant shall also include as part of this phase all services included in the applicable portions of the approved project specific Proposal.

## 2.08 Surveying and Testing.

- (a) The Consultant and its appropriate subconsultant shall review all survey and test results reports and shall follow the recommendation of the soils engineer or other subconsultant unless, in the exercise of appropriate professional judgment, the Consultant or appropriate subconsultant discovers, or should in the exercise of professional judgment discover, factors indicating the report or results are not reliable.

- (b) If any such inadequacy or any inconsistency, based upon such exercise of professional judgment, is noted the Consultant and/or its appropriate subconsultant shall report such inconsistency or inadequacy promptly to the City.
- (c) It is understood and agreed that this Agreement does not include the investigation, sampling, testing, planning, abatement design, and remediation management of asbestos or other hazardous waste material. Should the presence of asbestos or other hazardous waste material be known to exist on a specific project or if the Consultant shall observe the presence of asbestos or hazardous waste material on any project site during its performance of services under this Agreement, the Consultant shall notify the City in writing immediately.
- (d) Payment to the Consultant for such surveying, testing, and abatement shall not exceed the surveying and testing budget set forth in the project specific proposal for each project.

#### 2.09 Disadvantaged Business Enterprise (DBE) Requirements.

The Disadvantaged Business Enterprise (DBE) Program is a federally mandated program that seeks to ensure non-discrimination in the award of U.S. Department of Transportation (DOT) assisted contracts and to create a level playing field on which DBEs can compete fairly for DOT assisted contracts. Local Public Agencies (“LPA” or “City”) that are subrecipients of FHWA funding from the Colorado Department of Transportation (CDOT) must comply with CDOT's FHWA-approved DBE Program. To such end, CDOT sets a contract goal for DBE participation for each DOT assisted LPA Contract. This overall On-call contract will not have an established DBE goal. Each Task Order will be evaluated individually by the Agency that is the steward of the specific Task Order funding to determine if the DBE program is applicable. If the DBE program is applicable to the individual Task Order, then 49 CFR Part 26 shall be adhered to.

Prime Consultant shall show it has committed to DBE participation sufficient to meet the goal or has otherwise made good faith efforts to do so. CDOT will amend the goal prior to award if the selected Consultant demonstrates good faith efforts were made, but sufficient commitments to meet the goal could not be obtained.

CDOT and the LPA will monitor the progress of the Awarded Contractor (Contractor) throughout the project to ensure that the awarded consultant's DBE commitments are being fulfilled. Modifications to the commitments must be approved by the CDOT Regional Civil Rights Office (RCRO). The LPA may withhold payment or seek other contractual remedies if the awarded consultant is not complying with the requirements of this provision. Upon completion of the Contract, CDOT may require the LPA to reduce the final payment to the awarded consultant if the awarded consultant has failed to fulfill the commitments or made good faith efforts to meet the contract goal.

The awarded consultant, sub recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The awarded consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-



assisted contracts. Failure by the awarded consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the LPA deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

For general assistance regarding the DBE program and compliance, review the attached CDOT Professional Services Local Agency Civil Rights and Disadvantaged Business Enterprise Program Requirements **Exhibit D**. Or contact CDOT's Civil Rights and Business Resource Center (CRBRC) at (303)757-9234.

### **SECTION 3 – COMPENSATION, PAYMENT AND FUNDING**

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

3.01 **Basic Services**. The City agrees to pay the Consultant, as compensation for any basic services rendered for a particular Project, either a maximum basic services fee, to be set forth in each approved Project proposal prepared prior to commencement of any work under this Agreement, 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 any approved project proposal, the City will not compensate the Consultant for expenses such as postage, travel, mileage, telephone, reproduction, and messenger service costs incurred in connection with Work performed under this Agreement. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproducible, etc. are not included in the hourly rates, and will be itemized as part of each on-call work order as a not-to-exceed reproducible expense.

3.03 **Surveying and Testing**. The Consultant shall be reimbursed its costs for any previously approved surveying, utility locating and testing services it provides for any assigned project, subject to the terms and conditions set forth herein and any surveying, utility locating and testing budget limits for that specific project.

3.04 **Additional Services**. The Consultant shall be compensated for any additional services for any assigned project, subject to the terms and conditions set forth herein and an additional services budget limits for that specific project.

3.05 **Invoices**. The Consultant shall invoice and be paid monthly based on hours worked at hourly rates included in **Exhibit B**, reimbursable expenses, surveying and testing and additional services all subject to the Maximum Contract Amount. 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 Consultant shall maintain hourly records of the time 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 as necessary to show direct charges to specific projects and to distinguish fees and expenses. Upon submission of such invoices to the City, and approval by the City, payment shall issue. Final payment to the Consultant, for each assigned project, shall not be made until after the project is accepted, all guarantees, certificates of completion, and record drawings and reproducible copies are delivered to the City, and the duties agreed to in the approved project proposal for that project are otherwise fully performed by the Consultant. No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to any assigned project contractor.

3.06 Maximum Contract Amount; Funding.

- (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 amount of **THREE MILLION DOLLARS (\$3,000,000)**. 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.
- (b) Notwithstanding any other term, provision, or condition herein, all payment obligations under this Agreement shall be limited to the funds duly and lawfully appropriated and encumbered or otherwise made available by the Denver City Council for the particular projects assigned to the Consultant under this Agreement for the particular year(s) in which this Agreement is in effect and paid into the Treasury of the City. As of the date of this Agreement, 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 project, at the time it accepts each proposal for a specific project. The Director of the Department of Transportation and Infrastructure, 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 a specific project.
- (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 project to exceed the amount appropriated for the Consultant's work on a specific project is expressly prohibited. In no event shall the issuance of any 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 Director of the Transportation and Infrastructure 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 project 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.

- (d) Hourly Rate Adjustments: Hourly wage rates are subject to escalation on an annual basis of the anniversary date of the contract NTP, for the Consultant staff provided in the categories stated; wage rate adjustments are not to exceed the Published Career Service Board's annual Classification and Pay Plan Review as adopted by the Mayor and City Council and that is in effect at the time of said adjustments. Revised wage rates must be submitted and approved by the Project Manager on or before the contract NTP anniversary date. Any increase of the maximum hourly wage rate is not to be construed by the Consultant as an approval to increase the hourly wage or billing rate of any employee.

#### **SECTION 4 – TERM AND TERMINATION**

4.01 Term. The term of this Agreement shall commence on the date of the first Notice to Proceed under this agreement and shall expire five years after that date, unless sooner terminated or extended by written amendment. The Consultant shall complete any task orders in progress that was initiated during the term of this Agreement shall extend until the completion thereof. All terms and conditions of the Agreement shall remain in full force and effect until such completion.

#### 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 Director.
- (b) The Director may terminate this Agreement for cause at any time if the Consultant's services become unsatisfactory, in the sole discretion of the Director. The City shall have the sole discretion to permit the Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.
- (c) In the event of a termination for cause, or in the event the Consultant becomes unable to serve under this Agreement, the City may take over work to be done under this Agreement and prosecute the work to the completion by contract or otherwise, and the Consultant shall be liable to City 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 project 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 drawings, specifications, and other documents relating to the design or administration of work completed or partially completed shall be delivered by the Consultant to the City in the event of any 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, delivery of drawings, specifications, and other documents referred to herein, and assisting the City during a transition to another Consultant, if applicable.

## **SECTION 5 – GENERAL PROVISIONS**

### 5.01 City's Responsibilities.

- (a) The City shall provide available information regarding its requirements for each project, including related budgetary information, and shall cooperate fully with the Consultant at all times. 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 inappropriate to the design or construction of the project.
- (b) If the City observes or otherwise becomes aware of any fault or defect in the project or non-conformance with Contract Documents, it shall give prompt notice thereof to Consultant.

### 5.02 Ownership of Documents.

- (a) The City shall have title and all intellectual and other property rights, in and to all phased and final engineering documents, and all data used in the development of the same, including the results of any tests, surveys or inspections at each project site, and 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 project for which the Documents were created is executed or not. The Consultant shall identify and disclose, as requested, all such Documents to the City.

- (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, including all CAD disks, shall be delivered to the City promptly upon completion thereof, or if authorized by the City's Project Manager, upon termination or expiration of this Agreement.
- (f) If the City reuses Design Documents prepared by the Consultant other than for their intended use or at a new location without the Consultant's approval, the City will have no claim against the Consultant arising out of any alleged defects, deficiencies or flaws in the Documents.

5.03 Taxes and Licenses. The Consultant shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the work 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 Director, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes. The Consultant shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and shall not allow any lien, 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.

5.04 Consultant's Records. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Consultant's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Consultant to make disclosures in violation of state or federal privacy laws. Consultant shall at all times comply with D.R.M.C. 20-276.

5.05 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.

5.06 No Discrimination in Employment. In connection with the performance of work under the 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, ethnicity, citizenship, immigration status, gender, age, military status, sexual orientation, gender identity, gender expression, marital status, source of income, protective hairstyle, or disability. The Consultant shall insert the foregoing provision in all subcontracts.

5.07 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, contractor 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 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, 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, Consultant’s insurer shall waive subrogation rights against the City.
- (e) Subconsultants: All subconsultants and subcontractors (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: 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 are outside the limits of liability;
    - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); 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) 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.

5.08 Defense and 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 obligation to defend and indemnify may be determined after Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the parties. Consultant's duty to defend and indemnify City shall relate back to 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.

5.09 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 Immunity Act, C.R.S. § 24-10-101, *et seq.*

5.10 Contract Documents; Order of Precedence. This Agreement consists of Section 1 through Section 5, which precede the signature page, and the following exhibits, which are incorporated herein and made a part hereof by reference:

Exhibit A	Consultant's Scope of Work
Exhibit B	Consultant's Key Personnel and Rates
Exhibit C	ACORD Insurance Certificate
Exhibit D	CDOT Professional Services Local Agency Civil Rights and Disadvantaged Business Enterprise Program Requirements

In the event of an irreconcilable conflict between a provision of Sections 1 through Section 5 and the listed exhibits, 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:

- Sections 1 through 5
- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit D

5.11 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.

5.12 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.

5.13 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 projects. In the event that Consultant fails to disclose in writing actual or potential conflicts, the Director, in their 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.

5.14 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.

5.15 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.

5.16 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.

5.17 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 mean 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 parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise the Consultant of such request in order to give the Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

5.18 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.

5.19 No Employment of Workers Without Authorization 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 a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.
  - (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.
  - (3) It will 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 a worker without authorization to perform work under the Agreement.

- (4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required 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 a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant shall also 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 worker without authorization, 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 a worker without authorization.
  - (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.
- (c) The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision set forth in this Section 19 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.

5.20 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.

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

5.22 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."

5.23 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 Director, 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 Director 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 Director, City Council or the Auditor.

5.24 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.

5.25 Notices. When this Agreement requires notice to the City or the Consultant it shall be sent by certified mail, return receipt requested to the addresses listed below:

to the City: Executive Director of the Department of  
Transportation and Infrastructure  
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: 2100 S River Parkway, Suite 100  
Portland, OR 97201

5.26 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.

5.27 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.

5.28 Electronic Signatures and Electronic Records. 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.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

**Contract Control Number:** DOTI-202264897-00  
**Contractor Name:** DAVID EVANS AND ASSOCIATES, INC.

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:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_



**Contract Control Number:**  
**Contractor Name:**

DOTI-202264897-00  
DAVID EVANS AND ASSOCIATES, INC.

By: DocuSigned by:  
Sara Ciasto  
AD048894BF4C4DE...

Name: Sara Ciasto  
(please print)

Title: Senior Associate  
(please print)

ATTEST: [if required]

By: DocuSigned by:  
Stacy Tschuor  
D0716C79E0654F5...

Name: Stacy Tschuor  
(please print)

Title: Vice President/Smart Mobility Practice Leader  
(please print)

# Exhibit A

## SCOPE OF WORK

All firms selected and awarded the 2022 DOTI Transportation and Mobility Professional Services On-Call contract are expected to meet the DBE Goal established on a per Task Order basis by the executer of the Federal Funding. In addition, the following is a list of anticipated Traffic, Transportation and other Professional Services needed through this (these) on-call contract(s).

### Traffic and Transportation Analysis

1. Data Collection and data upload into the City's MS2 system
  - Traffic Volume Count
  - Parking Occupancy Count
  - Pedestrian Volume Count
  - Bike Volume Count
  - Turning Movement Count
  - Vehicle Classification
2. Traffic Operational Delay Analysis
  - Traffic Warrant Study
  - Left Turn Study
  - Transit Study
3. Multimodal, Traffic Safety and Accident Analysis
4. Development Related Traffic Impact Analysis
5. Intersection and Street Conceptual Design Analysis

### Traffic Signal and Signal Systems Design

1. Corridor Signal Retiming
2. Traffic Signal Design
3. Traffic Signal System and ITS Planning and Design
4. Network/Fiber Design
5. Signal System Management
6. Transportation System Performance Measures
7. Transportation Planning and Traffic Simulation Modeling
  - Visualization/Simulation
8. Construction Inspection For ITS and Traffic Signal Projects
9. Fiber optic networking drawings and fiber optic splicing plan
10. Utility plans that comply with federal and state legislated SUE requirements
11. Construction (temporary) geometric design, capacity analysis, signing, pavement marking, and signal design plans and schedules
12. Lighting design (intersection, roadway, underdeck/tunnels, and electric/power system)

### Traffic/Transportation/Bicycle/Multimodal/Parking Management Planning and Studies

1. Corridor Safety Studies
2. Neighborhood Traffic Management and Traffic Calming
3. Bike and Pedestrian Planning and Studies
4. Multimodal Planning and Studies – Complete Streets
5. Parking Management Planning and Studies
6. Bicycle and Pedestrian – Facility Design & Signage Plans
7. Signing and Striping Plans

## Exhibit A

### **Geotechnical/Structural Engineering/Design Reports/Material Testing and Inspection/Environmental**

1. Subsurface Soils Borings, Profiling and Analysis
2. Geotechnical Engineering Design for Foundations, Structures or Soil Related Parameters
3. Pavement Designs Addressing Traffic, Subgrade, Asphalt, Concrete
4. Vehicle Classification for Pavement Design
5. Non-Destructive Testing and Analysis of Pavements
6. Non-Destructive Testing of Existing Bridge, Culvert and Retaining Wall Structures
7. Non-Destructive Inspection of Signal Poles and Mast Arms
8. Inspect and Verify Bearing Strata Support
9. Test and Assess Soil Subgrade Preparation for Construction
10. Inspect and/or Test Soils, Asphalt, Concrete, Concrete Reinforcing, Masonry, Timber, Steel, Welds, Structural Connections, Sewer Pipes, Cast-In-Place-Pipes; Cured-In-Place Pipes
11. Inspection Observation Services
12. Forensic Testing and Analysis
13. Federal and State Environmental Processes
  - National Environmental Policy ACT (NEPA)
    - A. Categorical Exclusions (Catex)
    - B. Environmental Assessments (EA)
    - C. Environmental Impact Statement (EIS)
  - Section 4(F)/6(F) Evaluation
  - Phase II Environmental Site Assessment (ESA) Phase 2
    - A. Soils Investigation and Studies
    - B. Groundwater Sampling and Analysis
  - Paleontological, Archeological, and Historical Assessments and Section 106 Consultation
  - Biological Resources Assessment
  - Noise Assessment
  - Visual Quality Assessment
  - Air Quality Assessment
  - Material Management Plans (MMP)
  - Environmental Inspections

### **General Civil/Water Resources Design**

1. Transportation Roadway/Intersection Design
  - Geometric Layout
  - Horizontal and Vertical Design
  - ADA Curb Ramp/Curb Returns/Sidewalk/Curb & Gutter/Median/Driveway/Valley Pan Design Per CCD Standards
2. Stormwater/Sanitary Sewer Design
3. Water Resources Planning and Design
  - CLOMR/LOMR
  - BMP, Green Infrastructure and Water Quality Analysis/Design
4. Storm Drainage Studies
5. Other Utility Design

# Exhibit A

## **Surveying**

1. Plats, Subdivision Plats, ROW Plans, Benchmarks, Range Points and Survey Documents
  - Adhere to All CCD City Surveyor Office Procedures, Rules and Requirements
  - See: <https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Department-of-Transportation-and-Infrastructure/Programs-Services/Right-of-Way-Survey>
2. Prepare ROW Plans in Accordance with CCD and CDOT Criteria
3. Perform Topographic Survey to Support Design Projects
4. Prepare Legal(S) and Exhibit(S) for ROW/Easements in Accordance with CCD and CDOT Criteria

## **Data Collection Inspection and Locates**

1. Perform the collection of various traffic and maintenance related data and physical information, using field instrumentation, unmanned aerial systems (UAS), photography, LiDAR, and other methods.
2. Develop data collection requirements, including identification of specific data fields, and perform field inventories of traffic control devices, ITS infrastructure assets, and maintenance infrastructure assets.
3. Provide underground fiber optic, power cable, and other utility locating services for traffic and ITS communications backbone and devices.
4. Provide structural inspections and reports of traffic signal poles and mast arms, ITS structures, and sign structures.

## **Utility Investigation and Activities**

1. Conduct and document an investigation of the project area to determine existing utility conditions within the project limits.
2. Meet with all utility providers and collect utility key maps for all utilities in the project area, identify all known utilities, ownership, type, size and special conditions should utility relocation be required, and research and obtain copies of utility easements (public and private) and utility franchise agreements to determine conditions under which the utility was established in its present location (e.g. by revocable permit or by a privately owned easement).
3. The utility investigation requirements are to meet Quality Levels A and/or B as required under CI/ASCE 38.
4. Shall employ Professional Engineers who are able to stamp plans, when applicable.
5. Perform potholing for locates and conduct Subsurface Utility Engineering (SUE) surveys.
6. Utility Coordination

## **Bridge Design and Inspection**

1. Provide Preliminary and Final Design Services For Bridge, Culvert, Retaining Wall, Inlet/Inlet Transition, and Special Structure Design Projects In Accordance With CCD and CDOT Criteria
2. Provide Inspection (Including Underwater) and Loss Rating Services for Existing Structures
3. Provide Construction Services For Structural Projects

## **Public Involvement and Communications**

1. Community Outreach/Public and Agency Coordination
2. Stakeholder engagement

## Exhibit A

3. Written and Verbal Translation: Spanish

### **Review and Technical Support**

1. Conduct program and project management oversight, coordination, and facilitation activities, and assist region and headquarters staff to deliver safety, traffic engineering, ITS, and operations programs.
2. Environmental Assessments, Environmental Impact Studies, and maintenance studies as requested, including independent review of other's designs.
3. Attend, provide visual aids, take minutes, and prepare reports as needed for meetings.
4. Provide technical assistance with traffic engineering, ITS, and maintenance-related issues as requested and create white paper write-ups.
5. Conduct modeling, simulation, analysis, and alternatives analysis for various roadway segment and intersection configurations for traffic engineering, operations, and safety scenarios using current modeling software, including VISSIM, SYNCHRO, TruTraffic, Vision Zero Suite, and HCS

### **Other Expertise**

1. Transportation Management For Special Events
2. Project Scheduling
3. Cost Estimating
4. Landscape Architecture/Urban Design (As Relates To Streetscape/Design Projects)
5. Clerical Office Support
6. Transportation Management Center Design and Operations
7. Database Program Development and GIS Interface
8. CAD/GIS and Civil 3D Expertise
9. Graphics Design
10. FHWA Reporting
11. City ERA Submittal Process
12. CDOT Clearance Process

**TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL****Attachment 2 – Consultant/Sub-Consultant Team Members****CONSULTANT TEAM MEMBERS**

Prime Consultant: David Evans and Associates, Inc.

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). Provide additional sheets as necessary.

Title/Classification	Responsibilities	Rate/Hr.
<b>ENGINEERING</b>		
Vice President	Executive oversight; quality assurance; technical advisor	\$330.00
Project Director	Resource management; project/task management; technical advisor; quality assurance	\$315.00
Principal Engineer	Resource management; project/task management; technical advisor; overall quality control	\$283.00
Senior Project Manager II	Project/task management; technical advisor; overall quality control	\$257.00
Engineering Task Manager	Project/task management; technical advisor; overall quality control	\$225.00
Project Manager	Project/task management; technical advisor; overall quality control	\$203.00
Senior Project Engineer	Design, drawings, studies, specs, estimates, reports	\$195.00
Senior Designer	Design, drawings, studies, specs	\$188.00
Engineering Task Leader	Design, drawings, studies, specs, estimates, reports	\$180.00
Senior Engineer	Design, drawings, studies, specs, estimates, reports	\$175.00
Project Engineer	Design, drawings, studies, specs	\$162.00
CADD Manager	CADD, preparation of drawings, maps, photographs	\$158.00
Engineer III	Design, drawings, CADD, design reviews	\$156.00
Engineer II	Design, drawings, CADD	\$148.00
Engineer	Design, drawings, CADD	\$140.00
CADD Specialist	CADD, preparation of drawings, maps, and models	\$140.00
Junior Engineer II	Design, drawings, studies, specs	\$125.00
Designer	Design, drawings, studies, specs	\$120.00
Junior Engineer I	Design, drawings, studies, specs	\$115.00
Engineering Technician	Design, drawings, studies, specs CADD, preparation of drawings, maps, photographs	\$110.00
CADD Technician II	CADD, preparation of drawings, maps, photographs	\$105.00
Junior Engineering Technician	Design, drawings, studies, specs CADD, preparation of drawings, maps, photographs	\$100.00
CADD Technician	CADD, preparation of drawings, maps, photographs	\$92.00
<b>PLANNING</b>		
Planning Principal	Project/task management; technical advisor; overall quality control	\$272.00
Managing Planner	Project/task management; technical advisor; overall quality control	\$240.00
Planning Project Manager	Project/task management; technical advisor; overall quality control	\$225.00
Planning Quality Manager		\$215.00
Planning Task Leader	Project/task management; technical advisor; overall quality control	\$198.00
Senior Landscape Architect	Horizontal design and coordination	\$190.00
Senior Environmental Planner	Project/task management; technical advisor; overall quality control	\$188.00
Senior Transportation Planner	Project/task management; technical advisor; overall quality control	\$185.00
Planner II	Transportation, multimodal, NEPA, or other planning activities, document writing	\$175.00
Planner	Transportation, multimodal, NEPA, or other planning activities, document writing	\$165.00
Transportation Planner II	Transportation planning, data compilation, document writing	\$156.00
Environmental Planner	Environmental studies, NEPA compliance oversight, and QA/QC	\$145.00
Transportation Planner I	Transportation planning, data compilation, document writing	\$145.00

## TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

Biologist	Environmental field investigations, planning documentation, permitting, and studies	\$125.00
Landscape Architect	Horizontal design and coordination	\$120.00
Junior Planner	Transportation and environmental studies and NEPA compliance project support	\$105.00
Landscape Designer	Horizontal design and coordination assistance	\$100.00
Senior GIS Specialist	Develops macros for GIS Analysis; document layout	\$145.00
GIS Specialist	GIS databases, designs updates maps, prepares metadata	\$120.00
Junior GIS Specialist	GIS data manipulation	\$100.00
<b>SURVEYING</b>		
Field Survey Crew (3 person)	Survey field work	\$290.00
Field Survey Crew (2 person)	Survey field work	\$195.00
Field Survey Crew (1 person)	Survey field work	\$135.00
Survey Manager	Project/task management - technical advisor, overall quality control	\$220.00
Principal Surveyor	Task Management, drafting, calculations, written property descriptions	\$200.00
Senior Project Surveyor	Drafting, calculations, written property descriptions	\$185.00
Project Surveyor	Drafting, calculations, written property descriptions	\$157.00
Senior Survey Technician	Drafting	\$140.00
GPS Surveyor	Survey field work	\$133.00
Survey Technician / Draftsman	Drafting	\$120.00
<b>CONSTRUCTION</b>		
Senior Construction PM	Project/task management; technical advisor; overall quality control	\$262.00
Construction Project Engineer	Oversight of quality and compliance tasks during construction	\$168.00
Construction Inspector III	Construction observation and inspection	\$140.00
Construction Inspector II	Construction observation and inspection	\$125.00
Construction Inspector I	Construction observation and inspection	\$115.00
<b>ADMINISTRATION</b>		
Senior Project Administrator	Preparation of project deliverables, word processing, accounting	\$135.00
Project Accountant	Project accounting	\$125.00
Project Assistant	Support to project or task managers, preparation of project reports or documents	\$125.00
Senior Administrative Assistant	Administrative support	\$110.00
Administrative Assistant	Administrative support	\$100.00
Clerical	Administrative support	\$78.00
Senior Graphics Specialist	Marketing graphics; graphic design of project deliverables	\$137.00
Graphics Specialist	Marketing graphics; assistance with design of project deliverables	\$115.00

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: N/A

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.

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## SUB-CONSULTANT TEAM MEMBERS

Firm Name: Michael Baker International

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

Title/Classification	Responsibilities	Rate/Hr.
Group Manager/Principal	Assures commitment of resources. Assures that qualified staff at the appropriate classification are assigned to tasks. Monitors client satisfaction and resolves issues as needed.	\$250
Project Manager I	Task management. Technical lead on projects. QA/QC and technical reviews of deliverables. Coordination with project stakeholders. Preparation and review of project documentation and submittals. Main point of contact for clients, projects and tasks.	\$165
Project Manager II		\$175
Project Manager III		\$190
Sr. Project Manager		\$200
Civil Associate I	Responsible for engineering design and analysis under the supervision of an Engineer. Entry to junior level. Assist with preparation of plans, exhibits, reports, and cost estimates.	\$90
Civil Associate II		\$100
Civil Associate III		\$110
Designer I	Preparation and conceptual designs, plans, and exhibits. Assist with CAD support and with preparing reports, quantities, and cost estimates under the supervision of an Engineer.	\$85
Designer II		\$95
Designer III		\$105
Sr. Designer		\$120
Engineer I	Task technical leads. Mid to senior level. Responsible for engineering design and analysis. Oversight of Civil Associates and Designers. Preparation of plans, exhibits, reports, and cost estimates.	\$120
Engineer II		\$130
Engineer III		\$145
Sr. Engineer		\$160
Planner I	Task technical planning leads. Responsible for planning level tasks, data collection and analysis, coordination with designers and engineers. Assist with preparation of reports.	\$90
Planner II		\$100
Planner III		\$115
Sr. Planner		\$130
CAD Technician I	Preparation of CAD drawings, maps, and exhibits.	\$80
CAD Technician II		\$90
CAD Technician III		\$105



## TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

Sr. CAD Technician		\$120
GIS Technician I	GIS database creation, modification, analysis and graphics preparation. Website creation and maintenance.	\$95
GIS Technician II		\$105
GIS Technician II		\$120
Sr. GIS Technician		\$140
Project Controls	Project accounting, project set-up, maintenance and close-out.	\$125
Admin. Assistant I	Administrative tasks and assistance.	\$90
Admin. Assistant II		\$100
Intern	Assisting with planning, engineering design and CAD tasks.	\$60

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.65

The City will not compensate the consultant for expenses such as postage, mileage, parking, or telephone costs. Reproduction, if requested by the City, shall be reimbursed at actual cost if approved in advance by Project Manager. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproductions, etc. are not included in the hourly rates, and will be itemized as a not-to-exceed reproducible expense and will be reimbursed at actual cost.

### REIMBURSABLE EXPENSES

Sub-Consultant: Michael Baker International

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

1. Actual cost of reproduction of drawings and specifications requested by the City.
2. Travel cost may apply for sub consultants not local to the project. Travel shall be pre-approved by the DOTI PM.

The Consultant will be required to submit a complete list of pricing reimbursable items.

#### Actual Costs

<u>Item</u>	<u>Charge Rate</u>
Copies (color)	(8 1/2 x 11") \$0.25/ each
Copies (color)	(8 1/2 x 14") \$0.50/ each
Red-line copies	\$2.00/ S.F.
Reproducibles	\$6.00/ page

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## Attachment 2 – Consultant/Sub-Consultant Team Members

### CONSULTANT TEAM MEMBERS

Firm Name: Hg Consult, Inc.

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). Provide additional sheets as necessary.

Title/Classification	Responsibilities	Rate/Hr.
Engineering VP	Responsible for a segment, discipline, business unit, geographic region, or project type. Typically has a bachelor's or master's degree, PE certification, and 12+ years of management-level experience.	\$299.33
Engineering Manager	Has on-site responsibility for day-to-day operations of a firm office or group. Responsibilities include divisional marketing, human resources (HR), and project production. Typically has a bachelor's or master's degree and 10+ years management experience. Requires a PE certification.	\$223.67
Engineer IV	PE with full responsibility for large, complex projects or a number of large projects. Has project management duties. Typically has a bachelor's or master's degree and 19+ years of experience. Requires a PE certification.	\$200.80
Engineer III	PE with major responsibility for technical performance on medium to large projects or multiple projects. Supervises other PEs, and may have project management duties. Typically has a bachelor's or master's degree and 14 -18 years of experience. Requires a PE certification.	\$183.66
Engineer II	PE with responsibility for technical performance on small to medium projects or designated tasks on large projects. May have some supervisory duties or work more independently. Typically has a bachelor's or master's degree and 9 -13 years of experience. Requires a PE certification.	\$152.37
Engineer I	PE with responsibility for technical performance on small to medium projects or designated tasks on large projects. May have some supervisory duties or work more independently. Typically has a bachelor's or master's degree and 9 -13 years of experience. Requires a PE certification.	\$135.38
Planner III/ Manager	Has on-site responsibility for day-to-day operations of a firm office or group. Works independently and has supervisory responsibilities. Works on large/complex projects. Has bachelor's degree and certification with 10 + years of management-level experience.	\$201.29
Planner III	Works independently and/or has supervisory responsibilities. Works on large/complex projects. Has bachelor's degree and certification with 11+ years of experience.	\$134.15

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3.28.

The City will not compensate the contractor for expenses such as postage, mileage, parking, or telephone costs. Reproduction, if requested by the City, shall be reimbursed at actual cost if approved in advance by Project Manager. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproductions, etc. are not included in the hourly rates, and will be itemized as a not-to-exceed reproducible expense and will be reimbursed at actual cost.

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## REIMBURSABLE EXPENSES

Sub-Consultant: Hg Consult, Inc.

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

1. Actual cost of reproduction of drawings and specifications requested by the City.
2. Travel/transportation costs shall not be reimbursable by the City for Prime Consultant.

The Consultant will be required to submit a complete list of pricing reimbursable items.

### Actual Costs

<u>Item</u>	<u>Charge Rate</u>
Copies (8 1/2 x 11")	\$ <u>N/A</u> / each
Copies (8 1/2 x 14")	\$ <u>N/A</u> / each
Red-line copies	\$ <u>N/A</u> / S.F.
Reproducibles	\$ <u>N/A</u> / page

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## SUB-CONSULTANT TEAM MEMBERS

Firm Name: ERO Resources Corporation

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

Title/Classification	Responsibilities	Hourly Rate
Project Principal	Manages activities and advises professional-level personnel for large-scale, complex projects in a variety of resources including wetlands, biology, ecology, due diligence, cultural resources and paleontological resources. May have a bachelor's degree or higher and 20+ years of experience.	\$ 208.00
Senior Project Biologist	Performs or conducts investigations, studies, biological assessments (BAs), biological evaluations (BEs), reports. Leads teams on medium to large scale projects. May have bachelor's degree or higher with 20+ years of experience.	\$ 144.00
Biologist I	Performs or conducts investigations, studies, BAs, BEs, reports. Leads small teams. May have bachelor's degree or higher with 15+ years of experience.	\$ 130.00
Biologist II	Performs investigations, studies, BAs, BEs and reports with some supervision. May lead small teams. May have bachelor's degree with 10+ years of experience.	\$ 116.00
Staff Biologist	Performs field sampling, data collection and research under limited supervision. May have a bachelor's degree with 5+ years of experience.	\$ 87.00
Biological Technician	Performs field sampling and data collection under supervision. May have some college with 0-5 years of experience.	\$ 70.00
Senior Environmental Planner	Develops scopes and cost estimates, and manages budgets and schedules, including for the comprehensive programs and plans for development of natural spaces. Lead teams or works independently and/or has supervisory responsibilities. Works on large/complex projects. May have a bachelor's degree or higher and relevant certification with 20+ years' experience.	\$ 194.00
Project Environmental Planner	Develops scopes and cost estimates and manages budgets and schedules. May lead small teams. May have a bachelor's degree or higher and relevant certification with 10+ years' experience.	\$ 146.00
Staff Environmental Planner I	Develops scopes and cost estimates and manages budgets and schedules. May lead small teams. May have a bachelor's degree or higher and relevant certification with 10+ years' experience.	\$ 105.00
Staff Environmental Planner II	Develops scopes and cost estimates and manages budgets and schedules. May have a bachelor's degree or certification and 5-10 years' experience.	\$ 88.00
Geoscientist I	Designs, implements, manages small to medium projects including site assessments. Monitors progress of small to medium sized projects. May lead small teams. May have a bachelor's degree or higher, relevant professional certifications, and has 15+ years' experience.	\$ 141.00
Geoscientist II	Monitors, conducts, and completes site progress, designs, and reports. May have a bachelor's degree or higher, relevant professional certifications, and has 10+ years' experience.	\$ 128.00
Geoscience Technician	Assists with investigations under supervision. May have a bachelor's degree or higher, relevant professional certifications, and 0-5 years' experience.	\$ 76.00

## TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

GIS/Graphics Specialist	Creates/maintains databases, maps, and graphics that can be combined with geographically referenced data, working with GIS software and programs that have the capacity to relate different types of data, such as socioeconomic, demographic, administrative, or political boundaries, land use, land cover, environmental, infrastructure, and transportation networks. Can work independently or as part of a team. Requires technical training.	\$ 136.00
Senior Cultural Resource Specialist	Manages large, complex archeological projects and leads teams. May have a bachelor's degree or higher and 20+ years of experience.	\$ 155.00
Project Cultural Resource Specialist	Uncovers archeological sites, and documents, itemizes, and studies unearthed items. Researches, categorizes, and interprets artifacts, architectural features, and types of structures recovered by excavation in order to determine age and cultural identity. Leads small teams. May have a bachelor's degree or higher and 15+ years of experience.	\$ 95.00
Staff Cultural Resource Specialist I	Assists with archeological projects with some supervision. May lead field teams. May have a bachelor's degree or higher and at least 10+ years of experience.	\$ 81.00
Staff Cultural Resource Specialist II	Assists with archeological projects under limited supervision. May have a bachelor's degree or higher and 5+ years of experience.	\$ 76.00
Cultural Resource Technician	Assists with archeological projects under supervision. May have a bachelor's degree or higher with 0-5 years of experience.	\$ 68.00
Architectural Historian I	Assists with projects involving historical archaeology and structures of historical significance. May lead small teams. May have a bachelor's degree or higher and at least 10+ years of experience.	\$ 103.00
Architectural Historian II	Assists with projects involving historical archaeology and structures of historical significance with some supervision. May have a bachelor's degree or higher and 5+ years of experience.	\$ 95.00
Word Processing/Editor	Refines work and coordinates activities of writers engages in preparing technical/scientific material for publication in conjunction with or independent from technical activities. May have a degree or technical training.	\$ 109.00
Administrative Staff	Responsible for maintaining critical business operations including reconciling accounts, accounting files, invoices, and various other items pertinent to the operation of a business. May have an associate's or bachelor's degree.	\$ 106.00
Clerical Staff	General office duties and performance of a variety of routine tasks for managing business operations. May have an associate's or bachelor's degree.	\$ 73.00

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3.3.

The City will not compensate the consultant for expenses such as postage, mileage, parking, or telephone costs. Reproduction costs, if requested by the City, shall be reimbursed at actual cost if approved in advance by Project Manager. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproductions, etc. are not included in the hourly rates, and will be itemized as a not-to-exceed reproducible expense and will be reimbursed at actual cost.

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## REIMBURSABLE EXPENSES

Sub-Consultant: ERO Resources Corporation

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

1. Actual cost of reproduction of drawings and specifications requested by the City.
2. Travel cost may apply for sub consultants not local to the project. Travel shall be pre-approved by the DOTI PM

The Consultant will be required to submit a complete list of pricing reimbursable items.

### **Actual Costs**

<u>Item</u>	<u>Charge Rate</u>
Copies (8 1/2 x 11")	\$ <u>0.15</u> / each
Copies (8 1/2 x 14")	\$ <u>0.15</u> / each
Red-line copies	\$ <u>N/A</u> / S.F.
Reproducibles	\$ <u>N/A</u> / page

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## SUB-CONSULTANT TEAM MEMBERS

Firm Name: Shannon & Wilson, Inc.

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

Title/Classification	Responsibilities	Rate/Hr.
Senior Vice President	Principal in Charge, QA/QC	\$295
Vice President	Senior level review	\$250
Senior Associate	Project management and point of contact	\$220
Associate	Project management, task leader.	\$180
Sr. Professional III	Task leader. Review and prepare technical documents.	\$165
Sr. Professional II	Lead preparation of geotechnical reports and calculations	\$150
Sr. Professional I	Preparation of geotechnical reports and calculations.	\$135
Professional IV	Lead and coordinate geotechnical explorations.	\$120
Professional III	Conduct geotechnical explorations. Support report prep.	\$110
Professional II	Conduct geotechnical explorations and lab testing.	\$95
Professional I	Conduct geotechnical explorations and lab testing.	\$90
Sr. Technician	Lead for laboratory and field testing.	\$110
Technician IV	Field inspection and and laboratory testing.	\$95
Technician III	Field inspection and and laboratory testing.	\$90
Technician II	Field inspection and and laboratory testing.	\$80
Technician I	Field inspection and and laboratory testing.	\$70
Sr. Drafter	Oversee CAD and GIS services.	\$115
Drafter III/IV	Complete CAD and GIS services.	\$105

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3.2.

The City will not compensate the consultant for expenses such as postage, mileage, parking, or telephone costs. Reproduction costs, if requested by the City, shall be reimbursed at actual cost if approved in advance by Project Manager. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproducibles, etc. are not included in the hourly rates, and will be itemized as a not-to-exceed reproducible expense and will be reimbursed at actual cost.

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## REIMBURSABLE EXPENSES

Sub-Consultant: Shannon & Wilson, Inc.

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

1. Actual cost of reproduction of drawings and specifications requested by the City.
2. Travel cost may apply for sub consultants not local to the project. Travel shall be pre-approved by the DOTI PM.

The Consultant will be required to submit a complete list of pricing reimbursable items.

### Actual Costs

<u>Item</u>	<u>Charge Rate</u>
Copies (8 1/2 x 11")	\$ _____ / each
Copies (8 1/2 x 14")	\$ _____ / each
Red-line copies	\$ _____ / S.F.
Reproducibles	\$ _____ / page



# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## SUB-CONSULTANT TEAM MEMBERS

Firm Name: Shannon & Wilson, Inc. (cont'd)

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

Title/Classification	Responsibilities	Rate/Hr.
Drafter I/II	Complete CAD and GIS services.	\$85
Senior Office Services	Project controls, accounting, and invoicing.	\$115
Admin. III/IV	Format, print, and assemble technical reports.	\$90
Admin. I/II	Format, print, and assemble technical reports.	\$80

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: \_\_\_\_\_.

The City will not compensate the consultant for expenses such as postage, mileage, parking, or telephone costs. Reproduction costs, if requested by the City, shall be reimbursed at actual cost if approved in advance by Project Manager. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproducible, etc. are not included in the hourly rates, and will be itemized as a not-to-exceed reproducible expense and will be reimbursed at actual cost.

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## SUB-CONSULTANT TEAM MEMBERS

Firm Name: Triunity, Inc.

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

Title/Classification	Responsibilities	Rate/Hr.
Matt Olley: Central Region Deputy Director	Rail Road Coordination	\$210
Jeff Kay: Project Manager	Rail Road Coordination	\$190
Kurt Snitker: Utility Manager	Utility Coordinator	\$190
Ryan Stroh: Utility Engineer	Utility Coordinator	\$170
Teagan Kramer: Utility Project Engineer	Utility Coordinator	\$130
Andrew Kean: Senior Cost Estimator	Cost Estimating	\$190
Mike Kuyper: Senior Civil Engineer	PM Support	\$180
Jennifer Myler: Utility Project Coordinator	PM Support	\$170
Charl Botha: Sr. ITS/Transportation Engineer	ITS/Fiber	\$170
Clayton Brown: ITS Designer	ITS/Fiber	\$170
Matt Pollard: Utility Engineer	ITS/Fiber	\$170

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.5.

The City will not compensate the consultant for expenses such as postage, mileage, parking, or telephone costs. Reproduction costs, if requested by the City, shall be reimbursed at actual cost if approved in advance by Project Manager. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproducibles, etc. are not included in the hourly rates, and will be itemized as a not-to-exceed reproducible expense and will be reimbursed at actual cost.

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## REIMBURSABLE EXPENSES

Sub-Consultant: Triunity, Inc.

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

1. Actual cost of reproduction of drawings and specifications requested by the City.
2. Travel cost may apply for sub consultants not local to the project. Travel shall be pre-approved by the DOTI PM.

The Consultant will be required to submit a complete list of pricing reimbursable items.

### Actual Costs

<u>Item</u>	<u>Charge Rate</u>
Copies (8 1/2 x 11")	\$ <u>N/A</u> / each
Copies (8 1/2 x 14")	\$ <u>N/A</u> / each
Red-line copies	\$ <u>N/A</u> / S.F.
Reproducibles	\$ <u>N/A</u> / page

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## SUB-CONSULTANT TEAM MEMBERS

Firm Name: Y2K Engineering, LLC

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

Title/Classification	Responsibilities	Rate/Hr.
Project Principal	Civil Engineering and Project Management	\$220
Sr. Project Manager	Transportation Planning and Engineering	\$205
Project Engineer, Level III / Project Manager	Transportation Planning and Engineering	\$190
Project Engineer, Level II	Transportation Planning and Engineering	\$165
Project Engineer, Level I	Transportation Planning and Engineering	\$145
Designer III	CAD Drafting	\$130
Engineering Designer II	Planning and Transportation Engineering	\$120
Engineering Designer I	Planning and Transportation Engineering Support	\$110
Engineering Intern	Planning and Transportation Engineering Support	\$70
Transportation Planner I	Transportation Planning	\$125
Transportation Planner II	Transportation Planning	\$145
Transportation Planner III	Transportation Planning	\$190

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3.0.

The City will not compensate the consultant for expenses such as postage, mileage, parking, or telephone costs. Reproduction costs, if requested by the City, shall be reimbursed at actual cost if approved in advance by Project Manager. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproductions, etc. are not included in the hourly rates, and will be itemized as a not-to-exceed reproducible expense and will be reimbursed at actual cost.

# TAB 3: TEAM QUALIFICATIONS - INDIVIDUAL KEY PERSONNEL

## REIMBURSABLE EXPENSES

Sub-Consultant: Y2K Engineering, LLC

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

1. Actual cost of reproduction of drawings and specifications requested by the City.
2. Travel cost may apply for sub consultants not local to the project. Travel shall be pre-approved by the DOTI PM.

The Consultant will be required to submit a complete list of pricing reimbursable items.

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Copies (8 1/2 x 11")	\$ <u>N/A</u> / each
Copies (8 1/2 x 14")	\$ <u>N/A</u> / each
Red-line copies	\$ <u>N/A</u> / S.F.
Reproducibles	\$ <u>N/A</u> / page



# Exhibit C

## CERTIFICATE OF LIABILITY INSURANCE

12/1/2022

DATE (MM/DD/YYYY)

9/19/2022

**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).**

<b>PRODUCER</b> Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000 kctsu@lockton.com	<b>CONTACT NAME:</b> <b>PHONE (A/C. No. Ext):</b> _____ <b>FAX (A/C. No):</b> _____ <b>E-MAIL ADDRESS:</b> _____														
<b>INSURED</b> DAVID EVANS AND ASSOCIATES, INC. 1456304 2100 S RIVER PARKWAY, SUITE 100 PORTLAND OR 97201	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> </thead> <tbody> <tr> <td><b>INSURER A :</b> Zurich American Insurance Company</td> <td style="text-align: center;">16535</td> </tr> <tr> <td><b>INSURER B :</b> Continental Casualty Company</td> <td style="text-align: center;">20443</td> </tr> <tr> <td><b>INSURER C :</b> American Guarantee and Liab. Ins. Co.</td> <td style="text-align: center;">26247</td> </tr> <tr> <td><b>INSURER D :</b> American Zurich Insurance Company</td> <td style="text-align: center;">40142</td> </tr> <tr> <td><b>INSURER E :</b></td> <td></td> </tr> <tr> <td><b>INSURER F :</b></td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	<b>INSURER A :</b> Zurich American Insurance Company	16535	<b>INSURER B :</b> Continental Casualty Company	20443	<b>INSURER C :</b> American Guarantee and Liab. Ins. Co.	26247	<b>INSURER D :</b> American Zurich Insurance Company	40142	<b>INSURER E :</b>		<b>INSURER F :</b>	
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<b>INSURER F :</b>															

**COVERAGES MAIN CERTIFICATE NUMBER: 18903776 REVISION NUMBER: XXXXXXXX**

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.

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"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	GLO9830389	12/1/2021	12/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
C	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	BAP9830390	12/1/2021	12/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	WC9336626	12/1/2021	12/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	<b>PROFESSIONAL LIABILITY</b>	N	N	AEH591924704	12/1/2021	12/1/2022	PER CLAIM \$1,000,000 ANNUAL AGGREGATE \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: PROJECT NAME: 2022 TRANSPORTATION & MOBILITY PROFESSIONAL SERVICES ON-CALL WITH THE CITY AND COUNTY OF DENVER CITY AND COUNTY OF DENVER, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES AND VOLUNTEERS ARE ADDITIONAL INSUREDS AS RESPECTS GENERAL LIABILITY AND AUTO LIABILITY, AND THESE COVERAGES ARE PRIMARY AND NON-CONTRIBUTORY, AS REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION APPLIES TO GENERAL LIABILITY AND AUTO LIABILITY WHERE ALLOWED BY STATE LAW AND AS REQUIRED BY WRITTEN CONTRACT.

**CERTIFICATE HOLDER**

**18903776**  
 CITY AND COUNTY OF DENVER  
 201 W. COLFAX AVENUE  
 DENVER CO 80202

**CANCELLATION** See Attachments

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

*Joseph M. Agnello*

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## CDOT PROFESSIONAL SERVICES LOCAL AGENCY CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT REQUIREMENTS

Please refer to CDOT's Local Agency Civil Rights Guidelines for more information:  
<https://www.codot.gov/business/civilrights/compliance/prof-services/resources-forms>.

### I. DEFINITIONS

*B2GNow*. Web based platform to track Civil Rights compliance (DBE/ESB participation) and prompt payment requirements on its contracts. The Consultant will use this platform to submit Utilization Plan(s), Subconsultant and Supplier/Vendor information on the Contract.

*CDOT Civil Rights*. The CDOT Civil Rights office that assist with the contract and prompt payment requirements on contracts. This can be in either the region or headquarters.

*Civil Rights and Business Resource Center (CRBRC)*. CDOT's Civil Rights office at Headquarters.

*Commercially Useful Function (CUF)*. Responsibility for the execution of work by actually performing, managing, and supervising the work, as described in 49 CFR Part 26.

*Commitment*. A portion of the Contract designated by the Consultant for participation by DBE firms. The DBE firm(s) are included in the proposal team for participation to meet the Contract Goal. Commitments must identify the work to be performed by the DBE and include the percentage of the contract committed to each DBE firm. Commitments are measured at the end of the contract and are calculated by the actual payments to a DBE firm divided by the total payments made under the Contract.

*Contract*. Agreement between the Local Agency and the Consultant, whereby the Consultant will be compensated in exchange for providing Professional Services and ancillary services. For purposes of this document, the term "Contract" refers to an individual, executed Task Order for an On-Call Agreement or a Master Contract (overarching agreement) for Project-Specific and Program-Specific Agreements.

*Contract Goal Percentage*. The percentage of the Contract established by CDOT for reasonable participation by DBEs and stated in the invitation for consultant services.

*Consultant*. An individual, firm, corporation, or other legal entity with a direct contractual relationship with the Local Agency's solicitation to render Professional Services and ancillary services.

*Disadvantaged Business Enterprise (DBE)*. A Colorado certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at [www.coloradodbe.org](http://www.coloradodbe.org).

*Emerging Small Business (ESB)*. A CDOT certified Emerging Small Business firm listed on the ESB Directory at [www.coloradoesb.org](http://www.coloradoesb.org).

*Good Faith Efforts (GFE)*. All necessary and reasonable steps to secure the necessary Commitments to meet the Contract Goal or other requirements of this contract, which by their scope, intensity, and appropriateness to the objective could reasonably be expected to fulfill the contract requirement. Guidance on Good Faith Efforts to meet the Contract Goal is provided in 49 CFR Part 26, Appendix A.

July 2022

*Local Agency.* A public agency, local public agency, established public owned organization, or private interest that can legally enter into an intergovernmental agreement with CDOT for a transportation related project. This can involve the design, construction or management of State and Federally funded projects.

*Professional Services.* The practice of architecture, engineering, professional land surveying, landscape architecture, and industrial hygiene as defined in Colorado Revised Statutes (CRS) 24-30-1402 and 48CFR Part 2.

*Reduction.* Reduction occurs when the Consultant reduces a Commitment to a DBE. A reduction is a partial Termination.

*Subconsultant.* An individual, firm, corporation or other legal entity to whom the Consultant sublets part of the contract. For purposes of these requirements, the term Subconsultant includes Suppliers/Vendors.

*Substitution.* Substitution occurs when a Consultant seeks to find another certified DBE firm to perform work on the contract as a result of a Reduction or Termination.

*Termination.* Termination occurs when a Consultant no longer intends to use a DBE firm for fulfillment of a Commitment. This includes, but is not limited to, instances in which a Consultant seeks to perform work originally designated for a DBE Subconsultant with its own forces or those of an affiliate, a nonDBE firm, or with another DBE firm. Part

*Utilization Plan (UP).* The documentation of Subconsultant and Supplier/Vendor participation on the awarded Contract. The Utilization Plan details all Subconsultants and Suppliers/Vendors included as part of the proposal team and Commitments by percentage made by the Consultant. The Consultant must submit the Utilization Plan within five (5) calendar days of receiving notice from CDOT's B2GNow system.

*Vendor.* Participant on a contract that is providing services not considered to be a Professional Services as defined in CRS 24-30-1402 and 48CFR Part 2.

*Work Code.* A code to identify the work that a DBE is certified to perform. A work code includes a six (6) digit North American Industry Classifications System (NAICS) code plus a descriptor. Work codes are listed on a firm's profile on the Colorado UCP DBE Directory at <https://coucp.dbesystem.com/>. The Local Agency may include CDOT in discussions for clarification. The consultant may contact the Civil Rights and Business Resource Center to receive guidance on whether a work code covers the work to be performed.

## **II. NONDISCRIMINATION AND SUBCONTRACTING REQUIREMENTS**

The following requirements apply to all contracts and subcontracts. The statements in Section II will be included in the Local Agency's solicitations for professional services on federally funded projects.

*A. Non-discrimination.* The Consultant, with regard to the work performed by it during the contract term, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.



B. *Civil Rights Act of 1964 Title VI*. CDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

C. *Consultant Assurance*. By submitting a proposal for this contract, the Consultant agrees to the following assurance: The consultant, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract. Such other remedy as deems appropriate, which may include, but is not limited to 1) withholding monthly progress payments 2) assessing sanctions 3) liquidated damages 4) disqualifying the consultant from future bidding as non responsible.

D. *Prompt Payment*. Payments to all Subconsultants shall be made within seven (7) calendar days of receipt of payment from Local Agency, or no later than ninety (90) calendar days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. The Local Agency will assist in enforcing the Civil Rights Requirements outlined above as well as the State's Prompt Payment law, CRS 24-91-103(2) and 49 CFR, Part 26. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify the Subconsultant no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include failure to timely submit an invoice or to deposit payments made. The Consultant shall electronically submit prompt payment audit reports in B2GNow by the fifteenth (15<sup>th</sup>) of each month through the B2GNow software. If no payment has been made, the Consultant shall document this in the prompt payment audit reporting.

E. *Subcontract Terms*. Parts A-D of this section shall be included in all subcontracts or other agreements for the performance of work on the contract.

### III. CONTRACT COMMITMENT

At the time of initial proposal, the Consultant must make a contractually binding guarantee to meet the Contract Goal in accordance with 49 CFR 26.53.

A. *Affidavit of Small Business Participation*. The Affidavit of Small Business Participation is the Consultant's contractually binding guarantee to meet the Contract Goal or make Good Faith Efforts to do so. CDOT's *Affidavit of Small Business Participation* form must be submitted with the Consultant's statement of interest proposal. Failure to submit the CDOT *Affidavit of Small Business Participation* form will result in the Consultant being deemed non responsive and ineligible for award. The Local Agency will copy the top preferred proposals to CDOT's Civil Rights and Business Resource Center (CRBRC) for approval of CDOT's *Affidavit of Small Business Participation* form. This form includes the commitments to meet the DBE goal.

B. *Contract Utilization Plan (UP)*. Once the contract is awarded and the Local Agency receives a signed contract, the Local Agency will submit the *Local Agency Professional Services B2GNow Contract Information* form for CDOT to set up the contract in the B2GNow system. Once the contract is setup in the system, the Consultant will receive a notice from CDOT within five (5) calendar days of selection, to complete and submit

a Utilization Plan via B2GNow. In order to complete the Utilization Plan, the Consultant shall list all DBE, ESB, and nonDBE/ESB Subconsultants and Suppliers/Vendors included as part of its “most qualified” team. The Utilization Plan shall also include all Commitments by percentage.

*C. Consultant Responsibility.* The Consultant is solely responsible for ensuring that the Contract Goal is achieved upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever occurs first. The Local Agency and CDOT assists in the monitoring as oversight agencies.

*D. Contract Good Faith Effort Requirement.* The UP will not be approved by CDOT until the Consultant documents sufficient Commitments to meet the Contract Goal or demonstrates Good Faith Efforts to meet the Contract Goal even though it did not succeed in obtaining sufficient Commitments to do so.

1. Good Faith Efforts mean that the Consultant:
  - a. Documents it has obtained enough DBE participation to meet the Contract Goal, or
  - b. Documents that it made adequate good faith efforts to meet the Contract Goal, even though it did not succeed in obtaining enough DBE participation to do so
2. If the Consultant has not documented sufficient Commitments to meet the Contract Goal, the Consultant shall provide an explanation of its efforts to obtain Commitments by submitting the CDOT’s *Professional Services Good Faith Efforts Report* form and supporting documentation to CRBRC.
  - a. The CRBRC will conduct a review to determine whether the Consultant has demonstrated Good Faith Efforts to meet the Contract Goal
  - b. The CRBRC will approve the Contract Utilization Plan if it determines that the Consultant has made Good Faith Efforts to meet the Contract Goal
3. In conducting Good Faith Effort reviews, the CRBRC will utilize the guidance found in Appendix A to 49 CFR Part 26, where applicable. The CRBRC may also consider, but is not limited to, the following factors in evaluating the Consultant’s Good Faith Efforts:
  - a. Performance of other consultants in meeting DBE goals on contracts that have a similar scope of work, contract amount, location, and time frame
  - b. Reason(s) for choosing a non DBE subconsultant over an interested DBE
  - c. Documentation of DBEs solicited by the Consultant and verification from the DBEs that they were actually contacted by the Consultant, including DBE firms outside of the “most qualified” team in the event that DBE team members are unavailable or unwilling to participate
  - d. Past performance by the Consultant
  - e. Any other factors that may be pertinent to the factual circumstances

If the CRBRC determines the Consultant has made Good Faith Efforts to meet the Contract Goal, all documentation of the determination will be uploaded into B2GNow. CDOT will review the documentation and the Contract Utilization Plan will be approved.

*E. Administrative Reconsideration.* If the CRBRC determines that the Consultant did not demonstrate Good Faith Efforts to meet the Contract Goal, the Consultant will be provided a written notice of its determination and an opportunity for administrative reconsideration by the CDOT Chief Engineer or a designee.

1. The Chief Engineer or a designee will conduct administrative reconsideration.

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- a. The Consultant will have five (5) calendar days from the written notice to request administrative reconsideration of an adverse Good Faith Efforts determination
  - b. The request shall include the basis for reconsideration and any supporting documentation that the Consultant would like to be considered as part of the reconsideration
  - c. The reconsideration should also specify whether the Consultant is requesting an informal, in person or telephonic hearing with CDOT to address the issues in the Good Faith Efforts determination
  - d. If a request for an informal hearing is not made, the Consultant will be deemed to have waived this opportunity
2. Upon a hearing request, the Civil Rights and Business Resource Center will establish a date and time for the hearing and send written notice via email to the Consultant, the Local Agency and Civil Rights at least two (2) business days in advance of the hearing.
    - a. If schedules permit, the parties may waive the two (2) business day requirement
    - b. The CDOT Chief Engineer or designee may request additional documentation from the Consultant and/or the Local Agency
    - c. A copy of all requests and responses should be provided to the other party and the other party shall be given an opportunity to respond
  3. The CDOT Chief Engineer or a designee shall issue the final determination as to whether the Consultant made Good Faith Efforts to meet the Contract Goal.
    - a. The determination will be in writing and explain the basis for the CDOT Chief Engineer's or designee decision regarding whether or not the Consultant demonstrated Good Faith Efforts to meet the Contract Goal
    - b. The Good Faith Efforts determination of the CDOT Chief Engineer or designee is not appealable

#### **IV. ELIGIBLE DBE PARTICIPATION**

In order to count towards the Contract Goal, (1) the work performed by the DBE Consultant, Subconsultant, or Supplier/Vendor must be identified in an approved Commitment, and (2) the Consultant, Subconsultant, or Supplier/Vendor must be DBE certified in the committed work upon submission of the Commitment. The Local Agency will evaluate whether the work it is committed to perform can reasonably be construed to fall within the work areas for which the DBE Consultant, Subconsultant, or Supplier/Vendor is certified. The Local Agency may request assistance from CDOT if needed.

A. DBE participation will be tracked through the B2GNow.

B. Only work actually performed by the DBE will count towards the Contract Goal.

1. The Consultant may count the entire amount of fees or commissions charged by a DBE firm for:
  - a. Providing a bona fide service, such as professional, technical, consultant, or managerial services
  - b. Providing assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of work, provided that the fee or commission is

determined by the Local Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services

2. When a DBE subcontracts part of the work of its contract to another firm, individual, or entity, the value of the subcontracted work may only be counted if the subcontractor is also a DBE certified firm.
  - a. Work that a DBE subcontracts out to a non-certified firm will not count toward the goal
  - b. DBE firms may use an employee leasing company for the work
    - i. The participation of the leased employees will count only if the certified DBE firm maintains an employer-employee relationship with the leased employees
    - ii. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on the job activities of the leased employees, as well as ultimate responsibility for wage and tax obligations related to the employees
  - c. Unless certified in the work to be performed, staffing agencies only count toward the Contract Goal for placement fees and any hourly fee beyond the temporary employee's actual rate of pay
3. When a DBE performs as a participant in a joint venture:
  - a. Only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces may count toward the Goal
  - b. In order to receive credit, the joint venture agreement must be submitted as an attachment in the utilization plan submitted through B2GNow for review and approval by CDOT

C. A DBE must be performing a Commercially Useful Function, as defined by 49 CFR 26.55(c), in order for its participation to count towards the Contract Goal.

1. To perform a Commercially Useful Function:
  - a. The DBE must be responsible for the execution of the work to be performed and
  - b. Actually performing, managing, and supervising the work
2. In evaluating whether a DBE is performing a Commercially Useful Function, the Local Agency will consider factors, including but not limited to:
  - a. The amount of subcontracted work
  - b. Industry practices, and
  - c. Whether payment to the DBE is commensurate with the work for which the DBE is claiming credit, and any other relevant factors
3. A DBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant:
  - a. In a transaction
  - b. Through which funds are passed in order to obtain the appearance of DBE participation
4. A DBE is presumed as not performing a Commercially Useful Function:

- a. When it does not perform or exercise responsibility for at least thirty (30) percent of the total cost of the work it is contracted to perform with its own workforce
  - b. When the DBE subcontracts a greater portion of its work than would be expected based on normal industry practice for the type of work involved. In these circumstances, the DBE may present evidence to CDOT in order to rebut the presumption.
5. In order to finalize the Contract, the Consultant must have submitted a CDOT Form 1432, *Commercially Useful Function Questionnaire* for each DBE firm that performed work or provided supplies toward meeting the contract goal. The DBE, Consultant and Engineer must sign the CDOT Form 1432.
  6. The Local Agency's determinations regarding Commercially Useful Function matters are not appealable.

## V. UTILIZATION PLAN MODIFICATIONS

*A. Reduction, Substitution, Termination.* Reduction, Substitution, or Termination of Commitments during the life of the Contract shall only be permitted at the discretion of the Local Agency based upon a demonstration of Good Cause by the Consultant. The Consultant may not Reduce, Substitute, Terminate, or add Commitments without the Local Agency's approval. Consultants may request modification approval to the Local agency. The Local Agency may request for CDOT's assistance and/or use CDOT's *Professional Services DBE Participation Plan Modification Request* form

1. *Notice to Subconsultant.* Before requesting the Local Agency approval, the Consultant must give the DBE Subconsultant notice in writing of the Consultant's intent to Reduce, Substitute or Terminate the Subconsultant's work. Unless otherwise waived in writing by the DBE, the Consultant must give the DBE five (5) calendar days to respond to the Consultant's notice and advise the Local Agency of the reasons, if any, that it objects to the proposed Reduction, Substitution or Termination and why the Consultant's action should not be approved. If required as a matter of public necessity (e.g., safety), the Local Agency may waive or reduce the period to respond. The DBE firm may also voluntarily waive the response period.
2. *Good Cause Requirement.* A Consultant must demonstrate Good Cause before a request for Reduction, Substitution or Termination can be approved by the Local Agency. Good Cause does not exist if Reduction, Substitution or Termination of a DBE is sought solely so that the Consultant can self perform the work for which the DBE was engaged or so that the Consultant can substitute another firm to perform the work. In evaluating whether Good Cause exists, the Local Agency will consider, but is not limited to, the following factors:
  - a. Changes in the scope of work or scheduling that directly impacts the work committed to the DBE
  - b. Failure or refusal by the DBE to execute a written contract
  - c. Failure or refusal by the DBE to perform the work of its subcontract consistent with normal the industry standards, provided that such failure is not the result of bad faith or discriminatory actions of Consultant or one of its Subconsultants
  - d. The DBE fails to meet reasonable, nondiscriminatory insurance requirement
  - e. The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
  - f. The DBE is ineligible to work because of suspension or debarment proceedings or other state law

- g. The DBE is not a responsible Consultant
  - h. The listed DBE voluntarily withdraws from the project and provides to the Consultant written notice of its withdrawal
  - i. The listed DBE is ineligible to receive credit for its participation
  - j. The DBE owner dies or becomes disabled and the firm is unable to complete the work it is committed to perform
  - k. The DBE ceases business operations or otherwise dissolves
    - i. Other documented good cause reasons determined by the Local Agency to compel the termination of the DBE Subconsultant
3. *Good Faith Effort Requirement.* When a Commitment is Reduced or Terminated (including when a DBE withdraws), the Consultant shall make Good Faith Efforts to replace the DBE participation that has been Terminated or Reduced up to the Contract Goal. The replacement DBE(s) participation and amount does not have to be in the same type of work that was Terminated or Reduced.
4. Prior to making a DBE substitution, the Consultant must receive the Local Agency's approval for the substitution.
5. An approval of the modification constitutes a modification of the Utilization Plan through CDOT. Each substitute DBE approved by the Local Agency must have documentation. Documentation similar to a Project Cost Worksheet for Subconsultants or Letter of Intent for a Supplier/Vendor that shows commitments to the firm on the contract are required. Once approved, the Local Agency will work with the CRBRC to modify the UP in B2GNow.

## **VI. ENFORCEMENT**

It is the sole responsibility of the Consultant to ensure that Commitments are fulfilled or to request Utilization Plan modifications in a timely manner as described in Section VI. Approvals under the Contract are not an explicit or implicit approval by the Local Agency or CDOT of any Commitment Terminations, Reductions, Substitutions, or any other waiver of the Contract Civil Rights requirements.

A. The Local Agency may conduct reviews or investigations of participants as necessary. All participants on the Contract, including, but not limited to, DBE Subconsultants or Suppliers/Vendors are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information. This also includes applicants for DBE certification, ESB Subconsultants and applicants for ESB certification, complainants, and Consultants using Subconsultants to meet the Contract Goal.

B. If the Local Agency determines that a Consultant, Subconsultant or Supplier/Vendor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Local Agency to be unallowable, or if the Consultant engages in repeated violations, falsification or misrepresentation, the Local Agency may:

1. Refuse to count any fraudulent or misrepresented DBE/ESB participation
2. Withhold progress payments to the Consultant commensurate with the violation
3. Reduce the Consultant's prequalification status
4. Refer the matter to the Office of Inspector General of the US Department of Transportation for investigation
5. Seek any other available contractual remedy

## **VI. CONTRACT CLOSEOUT**

The Local Agency will collect a completed CDOT *Professional Services Closeout Report* form upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever comes first. This form will report the final actual DBE participation on the Contract and any amounts for which CDOT will be seeking reimbursement due to the Consultant not meeting Commitments. The Local Agency will submit the form to CDOT Civil Rights with submission of the final invoice.