

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of December, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City" or "Customer") and **ACCELA, INC.**, a California Corporation registered to do business in Colorado, whose address is 2633 Camino Ramon, Suite 120, Bishop Ranch 3, San Ramon, California 94583 ("Vendor").

1. **SERVICES TO BE PERFORMED:** Vendor, under the general direction of, and in coordination with, the City's Chief Information Officer or other designated supervisory personnel (the "Manager") agrees to provide the maintenance and support services (the "Services") listed on **Exhibit A**.

2. **DELIVERY AND ACCEPTANCE:** Vendor shall deliver the Services in accordance with Exhibit A.

3. **TERM:** The term of the Agreement is from January 1, 2011 through December 31, 2015.

4. **COMPENSATION AND PAYMENT:**

A. **Fee:** The fee for the Services is set out in Exhibit A and is due and payable in accordance with Exhibit A.

B. **Reimbursement Expenses:** The fees specified above include all expenses, and no other expenses shall be separately reimbursed hereunder.

C. **Invoicing:** Vendor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.

D. **Maximum Contract Liability:**

(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by Vendor under the terms of this Agreement for any amount in excess of the sum of **EIGHT HUNDRED NINETY SIX THOUSAND THREE HUNDRED EIGHTY NINE DOLLARS and seventy-eight cents (\$896,389.78)**. Vendor acknowledges that any work performed by Vendor beyond that specifically authorized by the City is performed at Vendor's risk and without authorization under this Agreement.

(ii) It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. Vendor acknowledges that (a) the City does

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not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (b) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. **STATUS OF VENDOR:** It is understood and agreed that the status of Vendor shall be that of an independent contractor and a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.2(C) of the Charter of the City; and it is not intended, nor shall it be construed, that Vendor or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever. Vendor agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the Manager with any City agency, or any person or firm under contract with the City doing work which affects Vendor's work.

6. **TERMINATION:**

A. The City has the right to terminate this Agreement, with or without cause, on thirty (30) days written notice. However, nothing herein shall be construed as giving Vendor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

B. If this Agreement is terminated by the City, Vendor shall be compensated for, and such compensation shall be limited to, (1) the sum of the amounts contained in invoices which it has submitted hereunder for satisfactorily completed work and which have been approved by the City; (2) the reasonable value to the City of the work which Vendor satisfactorily performed prior to the date of the termination notice, but which had not yet been approved for payment; and (3) the cost of any work which the Manager approves in writing which he determines is needed to accomplish an orderly termination of the work. The City shall be entitled to an immediate prorate refund of any prepaid fees for services not provided as of the date of termination.

C. Upon termination of this Agreement by the City, Vendor shall have no claim against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

7. **EXAMINATION OF RECORDS:** Vendor agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of Vendor, involving transactions related to this Agreement. Such examination shall be limited to Vendor's normal business hours, at Vendor's premises, and upon reasonable prior notice to Vendor.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by either Party hereunder constitute or be construed to be a waiver by either Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in

breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

9. **INSURANCE:**

A. **General Conditions:** Vendor 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. Vendor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Vendor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Vendor. Vendor 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 Vendor. The Vendor 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:** Vendor shall provide a copy of this Agreement to its insurance agent or broker. Vendor may not commence services or work relating to the Agreement prior to placement of coverage. Vendor certifies that the certificate of insurance attached as **Exhibit B** 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 Vendor'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, Vendor and sub-contractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

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

E. Subcontractors and Sub-consultants: All subcontractors and sub-consultants (including independent Vendors, 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 Vendor. Vendor 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 sub-consultants maintain the required coverages. Vendor agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: Vendor 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. Vendor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Vendor'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 Vendor executes this Agreement.

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

I. Technology Errors & Omissions: Vendor shall maintain Technology Errors and Omissions insurance including network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

J. Additional Provisions:

(a) For Commercial General Liability and Excess Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds or cross liability provision; and

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

(b) For claims-made coverage:

(i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(c) Vendor 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 Vendor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

10. REPRESENTATION AND WARRANTY: Vendor represents and warrants that:

A. all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;

B. all services will conform to applicable specifications and the Exhibits attached hereto;

11. DEFENSE AND INDEMNIFICATION:

A. Vendor hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), except to the extent that such Claims have been specifically determined by the trier of fact to be due to the negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Vendor or its sub-contractors either passive or active.

B. Vendor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Vendor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. Vendor will defend any and all Claims which may be brought or threatened against City.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Vendor under the terms of this indemnification obligation. The Vendor 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.

F. Vendor will, at Vendor's expense, indemnify, defend and hold harmless the City, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney's fees and awarded damages) arising out of a claim that the Services, services, or their use by the City, infringe, violate or misappropriate a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party. The City will promptly notify Vendor in writing of any claim and cooperate with Vendor and its legal counsel in the defense thereof. Vendor may in its discretion (i) contest, (ii) settle, (iii) procure for the City the right to continue using the Services, or (iv) modify or replace the infringing Services so that it no longer infringes (as long as the functionality and performance are not degraded as reasonably determined by the City). The City may participate in the defense of such action at its own expense. If Vendor concludes in its reasonable judgment that none of the foregoing options are commercially reasonable, then Vendor will pay to City an amount equivalent to a pro rata portion (based on a 5 year straight line depreciation running from City's final acceptance of the Services) of the Services license fee(s) paid by the City under this Agreement and reimburse the City for all reasonable expenses for removal and replacement of the Services.

12. **COLORADO GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. (2003).

13. **TAXES, CHARGES AND PENALTIES:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

14. **ASSIGNMENT:** Vendor covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the Manager. Any attempts by Vendor to assign or transfer its rights hereunder without such prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Agreement and all rights of Vendor hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager. A change in control of Vendor or a transfer by Vendor for purposes of financing shall not constitute an assignment hereunder.

15. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Vendor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements. It is the express intention of the City and Vendor that any person other than the City or Vendor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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

17. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement, including the exhibit attached hereto (each of which is specifically incorporated herein) is intended as the complete integration of all understandings between the parties. No prior contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement, except it is agreed that the parties will develop a Project Schedule and Payment Schedule, described in Exhibit A, which, when completed, will be incorporated herein by reference. .

18. **SEVERABILITY:** The parties agree that if any provision of this Agreement or any portion thereof is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected.

19. **CONFLICT OF INTEREST:**

A. The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein; and Vendor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. Vendor agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. Vendor 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 Vendor by placing Vendor's own interests, or the interests of any party with whom Vendor 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 Vendor written notice which describes the conflict. Vendor shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

20. **NOTICES:** Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

And by the City to: Contracts Administrator
Accela, Inc.
2633 Camino Ramon, Suite 120
Bishop Ranch 3
San Ramon, California 94583

By Vendor to: Director of Development Services

City and County of Denver
201 W. Colfax, Dept. 203
Denver, CO 80202

21. **DISPUTES:** All disputes of whatever nature between the City and Vendor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code, § 56-106(b), et seq. For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in Paragraph 1 hereof.

22. **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 and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

23. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, Vendor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor further agrees to insert the foregoing provision in all subcontracts hereunder.

24. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Vendor 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 barring Vendor from City facilities or participating in City operations.

25. **CONFIDENTIAL INFORMATION; OPEN RECORDS:**

A. **City Information:** Vendor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Vendor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Vendor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Vendor shall be held in confidence and used only in the performance of its obligations under this Agreement. Vendor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Vendor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential" and which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Vendor by the City.

Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

B. Use of Proprietary Data or Confidential Information:

(i) Except as expressly provided by the terms of this Agreement, Vendor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. Vendor further acknowledges that by providing this Proprietary Data or confidential information, the City is not granting to Vendor any right or license to use such data except as provided in this Agreement. Vendor further agrees not to disclose or distribute to any other party, in whole or in part, the Proprietary Data or confidential information without written authorization from the Manager and will immediately notify the City if any information of the City is requested from the Vendor from a third party.

(ii) Vendor agrees, with respect to the Proprietary Data and confidential information, that: (1) Vendor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (2) Vendor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) Vendor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

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

D. Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and confidential information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. Vendor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, Vendor agrees to contact the City immediately.

E. Vendor's Information: The City shall endeavor, to the extent provided by law, to comply with the confidentiality provisions set out in the End User License Agreement, provided, however, that The City understands and agrees that the Vendor Services and

documentation including, but not limited to, the Source Code, Object Code, the Interface Requirements Document(s) Acceptance Test Procedures, the Statement of Work, the Services design, structure and organization, Services screens, the user interface and the engineering know-how implemented in the Services (collectively "Vendor Confidential Information") constitute the valuable properties and trade secrets of Vendor, embodying substantial creative efforts which are secret, confidential, and not generally known by the public, and which secure to Vendor a competitive advantage. The City agrees during the term of this Agreement and the license granted hereunder, and thereafter, to hold the Vendor Confidential Information including any copies thereof and any documentation related thereto, in strict confidence and to not permit any person or entity to obtain access to it except as required for the City's exercise of the license rights granted hereunder, and except as required by the parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. (2003). In the event of a request to the City for disclosure of such information, the City shall advise Vendor of such request in order to give Vendor the opportunity to object to the disclosure of any of its documents which it marked as 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 Vendor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Vendor 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 Vendor'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.

26. LEGAL AUTHORITY:

A. Vendor assures and guarantees 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.

B. The person signing and executing this Agreement on behalf of Vendor does hereby warrant and guarantee that he has been fully authorized by Vendor to execute this Agreement on behalf of Vendor and to validly and legally bind Vendor to all the terms, performances and provisions herein set forth.

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

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

28. **CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** This Agreement consists of Paragraphs 1 through 35 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Exhibit A
Exhibit B

In the event of (i) an irreconcilable conflict between a provision of Paragraphs 1 through 37, and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Paragraphs 1 through 35
Exhibit A
Exhibit B

29. **SURVIVAL OF CERTAIN PROVISIONS:** The parties understand and agree that all terms and conditions of this Agreement together with the exhibits and attachments hereto which, by reasonable implication, contemplate continued performance or compliance beyond the 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 Vendor'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.

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

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

32. **FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or Services from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, Vendors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.

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

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

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

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the day first above written.

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
STEPHANIE Y. O'MALLEY, Clerk and
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:
DAVID R. FINE, Attorney
for the City and County of Denver

RECOMMENDED AND APPROVED:

By: _____
Assistant City Attorney

By: _____
Chief Information Officer

By: _____
Development Services

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance
Contract Control No CE15003

By: _____
Auditor

“City”

ACCELA, INC.,

Tax ID No. 94-2767678

By:  _____

Print Name: Colin Samuels

Title: Assistant Corporate Secretary

“Vendor”

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EXHIBIT A

Part Number	Products and Description	First Year
MI100ACAM12060 1	Accela Citizen Access Annual Maintenance and Support	\$13,119.57
MI100AMODEP06 01	Accela Mobile Office Department Site License Annual Maintenance and Support	\$41,000.00*
MI100DEPALM060 1	Accela Land Management Department Site License Annual Maintenance and Support	\$75,640.00
MI100DEPALC060 1	Accela Licensing Department Site License Annual Maintenance and Support	\$47,250.00
MI10AGISDEP060 1	Accela GIS Department Site License Annual Maintenance and Support	\$21,060.00
Total Annual Maintenance and Support		\$198,069.57

Maintenance Payment Terms

The maintenance period for the licenses being purchased under this quote will begin January 1, 2011. The first-year of maintenance is free of charge to the City. Customer may elect to continue its maintenance coverage for additional annual terms by paying to Accela the fees associated with such terms when these are due; **fees for the first four (4) optional renewal terms will not increase from previous year's amount by more than five percent (5%) annually.** Should Customer fail to renew its maintenance coverage or pay the applicable fees, Accela reserves the right to withhold all support. If Customer resumes maintenance coverage after one or more periods without such coverage, Customer will pay an amount equivalent to one hundred ten percent (110%) of all maintenance fees attributable to the period(s) without coverage, as such fees are calculated based upon pricing in effect at the time of resumption of maintenance coverage. All payments are non-refundable.

1. Scope of Maintenance

1.1 Maintenance Services

1.1.1 Telephone Support Accela will provide Customer with a telephone number to contact the Customer Resource Center (CRC), Accela's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific time Monday through Friday, excluding Accela's observed holidays.

1.1.2 E-Mail Support Accela will provide Customer with one or more electronic mail addresses to which Customer may submit routine or

non-critical support requests, which Accela will address during its regular business hours.

- 1.1.3 Online Support Accela will provide Customer with access to archived software updates and other technical information in Accela's online support databases, which are continuously available.
- 1.1.4 Remote Support When required to properly resolve a maintenance request, Accela will provide remote assistance to Customer via the WebEx™ Meeting Center™ environment or another mutually-acceptable remote communications method.
- 1.1.5 On-Site Support If Customer does not wish for Accela to resolve its maintenance requests remotely, Accela will provide on-site assistance to Customer at Accela's then-current time-and-materials rates. In addition to these charges, Customer will compensate Accela for associated airfare, lodging, rental transportation, meals, and other incidental expenses as such expenses accrue.
- 1.1.6 Software Updates Accela will provide revisions of and enhancements to maintained software products to Customer as such updates are generally-released by Accela. Software updates will be delivered or made available to Customer for electronic download from Accela's File Transfer Protocol ("FTP") site.

1.2 Maintenance Limitations

- 1.2.1 Limitations Generally The following are not covered by this MA, but may be separately available at rates and on terms which may vary from those described herein:
 - a) Services required due to misuse of the Accela-maintained software products;
 - b) Services required due to software corrections, customizations, or modifications not developed or authorized by Accela;
 - c) Services required by Customer to be performed by Accela outside of Accela's usual working hours;
 - d) Services required due to external factors including, but not necessarily limited to, Customer's use of software or hardware not authorized by Accela;
 - e) Services required to resolve or work-around conditions which cannot be reproduced in Accela's support environment;
 - f) Services which relate to tasks other than maintenance of Customer's existing implementation and configuration of the Accela-maintained software products including, but not necessarily limited to, enhancing or adapting such products for specific operating environments;

- g) Services requested by Customer to implement software updates provided by Accela pursuant to this MA; and
- h) New or additional applications, modules, or functionality released by Accela during the term of this MA.

1.2.2 Legacy Releases Accela will provide maintenance support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Accela will respond to maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Accela will not be provided pursuant to this MA, but may be separately available at rates and on terms which may vary from those described herein.

1.3 Warranty Accela will commence and complete the maintenance obligations described in this MA in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of Accela's industry, to ensure that the operation of the maintained software products does not materially differ from documented specifications. Accela may make repeated efforts within a reasonable time period to resolve maintenance requests. When a maintenance request cannot be resolved, Customer's exclusive remedy will be damages in an amount equal to the total of maintenance fees paid to Accela for the defective or non-conforming software products for the twelve (12) calendar months immediately preceding Customer's maintenance request.

SECTION A: Introduction to the Customer Resource Center

SECTION B: The Concept

- *High-level knowledgeable people with wide, varied backgrounds in IT*
- *Central focus of your relationship with Accela*
- *Part of your team*
- *Your problem becomes our problem*
- *Working together for success*

SECTION C:

SECTION D: The People

SECTION E: Up to 25 years experience with State, County, and City government data automation

E.1 Backgrounds in:

- State, County, and City government
- IT Management
- Systems analysis, design, and programming
- Software instruction
- Relational Database Design and Management

SECTION F:

SECTION G: Incident Handling

- *Call, e-mail or use the online tracking system.*
- *All incidents are put into our tracking system.*
- *You will receive an e-mail with your case number.*
- *(Your) Priority and Severity (determined by the problem)*
- *High priority items should be reported by phone*
- *Designate contacts that will interface with the Customer Resource Center*

SECTION H: Take Advantage of On-demand Support: Self-Service or Assisted Support

SECTION I:

SECTION J: Find a Solution in the Knowledge Base

- *The Knowledge Base is a database that contains answers to the most common questions about your Accela product(s)*
- *To access the Knowledge Base, visit Accela's corporate Web site*
- *No login is required*
- *It's easy to use, simply enter your keywords and click "Find"...*

J.1 Search Tips:

- *To search by product line, simply enter "Automation" in the search field with your search terms*
- *Enter just a few key words related to your question or problem*
- *Add key words to refine your search as necessary*
- *Do not use punctuation*
- *Search is not case sensitive*
- *Avoid non-descriptive filler words like "how", "the", "what", etc.*
- *If you do not find what you are looking for the first time, reduce the number of key words*

SECTION K: Use the Self-Service Online Support

- *The Accela online support site is the fastest and easiest way to log a case, view and track existing cases, and search the knowledge base*
- *A case can be product enhancements, software requests, questions, and service requests*
- *Login/password is required to access*

K.1 Support Site Tips:

- *To see all of the active/closed cases for your agency, send an e-mail to support@accela.com requesting to become a Super User*

SECTION L: Tips for Reporting Cases

- **Provide as much detail as possible**
 - All users or just one user?
 - All machines or just one machine?
 - What version are you running?
 - What has changed: In the system, on the server, on the network, or on the affect PC(s)
 - Screenshots
 - Steps to reproduce the behavior
- **Be available and responsive**
- **Start with online help, documentation, and Knowledge Base**
- **Submit a case via online support site, e-mail, or phone**
- **All cases are tracked in a central location and assigned a case number (e-mail notifications with this information is sent)**

SECTION M: Case Handling – Critical Severity

- **Definition**
 - System or application is non-functional or seriously affected and there is no reasonable workaround available
 - For example, business is halted
- **Response Goal**
 - Confirmation of receipt within 1 business hour
 - Update as information arrives or at the interval you specify
- **Resolution Goal**
 - Upon confirmation of receipt, Accela begins continuous work on the problem
 - Accela will put forth the effort to provide a workaround, fix, or estimated completion date within 48 hours after the problem has been diagnosed and/or replicated, provided there is an agency representative available to assist with issue diagnosis and testing during the resolution process

SECTION N: Case Handling – High Severity

- **Definition**
 - System or application is affected and there is no workaround available or the workaround is impractical
 - For example, cannot process payments or system response is very slow
- **Response Goal**
 - Confirmation of receipt within 4 business hours
- **Resolution Goal**
 - Accela will put forth our best effort to provide a workaround or fix or estimated completion date within 7 business days after the problem has been diagnosed and/or replicated

SECTION O: Case Handling – Moderate Severity

- **Definition**
 - System or application feature is non-functional and a convenient workaround exists
 - For example, non-critical feature is unavailable or requires additional user intervention
- **Response Goal**
 - Confirmation of receipt within 8 business hours
- **Resolution Goal**
 - Accela will put forth our best effort to provide a workaround or fix or estimated completion date within 14 business days after the problem has been diagnosed and/or replicated

SECTION P: Case Handling – Low Severity

- **Definition**
 - System or application feature works, but there is a minor problem
 - For example, incorrect label or Missing help file
- **Response Goal**
 - Confirmation of receipt within 24 business hours

- **Resolution Goal**
 - Resolution for the issue may be released as a patch set or be incorporated into a future release of the product

SECTION Q: Beyond On-demand Product Support

- *Learn more about new features*
- *“Sanity check” on new activities, fees, and environments*
- *Advice on report writing, esp. the Data Dictionary*
- *Advice on database maintenance*
- *Advice on database/hardware best practices*
- *Advice on data recovery*

SECTION R: Receive Email Updates

- *The Accela team sends product release information via e-mail to those contacts that have requested to receive them*

Major Releases

Approximately every two years the initial release number is incremented to indicate significant platform upgrades. Two major releases per year (every six months, Jan/Feb and July). In major releases we introduce significant enhancements.

Minor Releases

Between the major releases are point releases, for example between the 6.4.0 and 6.5.0 release the scheduled minor releases were 6.4.1 and 6.4.2. Minor releases allow the product to be enhanced as needed for new customer implementation and provide the opportunity to fix bugs that are considered critical enough to require a solution before the next scheduled major release.

Hot Fix Patches

In addition to scheduled releases, hot fix patches may be developed and deployed as needed to address a critical bug that has a significant impact on customer operations. These are developed on an as-needed basis and in consultation with all parties.

R.1

- *Submit your contact information to info@accela.com to start receiving these email updates today!*

R.2

- *Send a .xls or .csv file that includes the following fields: First name, Last name, Title, Agency, E-mail, and Phone (see sample below)*

SECTION S:

SECTION T: Product Support Limitations

- *No limitation to number or duration of calls*
- *Custom reports not written by Accela*
- *Unauthorized changes to the database or modules*
- *Migrations to the database not performed by Accela*
- *Custom applications not written by Accela*

SECTION U: Contact Product Support by Phone or E-mail

U.1 Hours: *M - F 4:00 AM - 6:00 PM Pacific Time*

U.2 Phone: *(559) 627-1959, ext. 5*

U.3 *Fax: (559) 733-5594*

U.4 *E-mail: support@accela.com*

SECTION V: Escalation

- *CRC has escalation points in*

- Engineering
- Data Conversions
- Services
- Account Management

- *Escalation to CRC Management*
 - Kathy Ream
 - 559-627-1959 X166
 - kream@accela.com

- *Escalation to Accela Management*
 - Eddie Ausherman
 - 559-627-1959 x115
 - eausherman@accela.com