

## **A G R E E M E N T**

### **(Real Estate Right of Way Services – On call)**

**THIS AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and **HDR ENGINEERING, INC.**, whose address is 1670 Broadway, Suite 3400, Denver, Colorado 80202 (“Consultant”), collectively referred to as the “Parties”.

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

**1. WORK TO BE PERFORMED:**

**a. Selection Method of a Right-of-Way Consultant for a Particular Project:**

The City may, but is not obligated to, request that the Consultant prepare a formal and/or informal proposal with a maximum estimated fee, delineated scope of work and time schedule for one or more right-of-way acquisition project(s) requested by the City on an as needed, on-call basis. The Consultant agrees and understands that the City may solicit formal and/or informal proposals in a “mini-bid” format for a particular project from all of its on-call professional right-of-way contractors. The City will evaluate the proposals with criteria established by the City, in its sole and absolute discretion, and may award work on a particular project from the submitted proposals to one or more right-of-way contractors for services specified by the City.

**b. Scope of Work:** If selected for a particular project by the City, the Consultant, under the general direction of, and in coordination with, the Director of the Division of Real Estate, or other designated supervisory personnel (“Director”), shall diligently perform the consulting services and produce the deliverables requested by the Director. Consultant shall provide its services in accordance with the normal degree of care and skill of other reputable Consultants providing similar services on similar projects of like size and nature at the same time and in the same locale as this project. The work to be performed for a specific project assigned by the Director will be requested in a Scope of Work issued by the City to the Consultant and signed by the Director and the Consultant (“Scope of Work”). Such Scope of Work will include a description of the work to be performed by the Consultant, a time schedule and a budget for a particular project. The Scope of Work will specifically identify which of the services outlined in **Exhibit A** are to be performed by the Consultant for the particular project. The Consultant

agrees to complete the project within the limits of the approved final proposal cost and during the approved time schedule, unless otherwise modified by the City. Should all project work exceed such cost due to causes within the Consultant's reasonable control, the Consultant agrees to complete the project at no additional cost to City and, in a manner acceptable to the City. The Consultant agrees that during the term of this Agreement it shall fully coordinate all services performed under this Agreement through the Director, or as otherwise directed by the City. The City's authorized representative for day-to-day administration of the Consultant's work under this Agreement is the Division of Real Estate Project Manager, as assigned by the Director. The Consultant shall submit work orders, correspondence, pay requests, and submittals to the Project Manager. The Consultant shall faithfully perform the services required by this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals who perform services of a similar nature to those described in this Agreement.

**b. Non-exclusivity:** The Consultant acknowledges and agrees that this Agreement does not create an exclusive right to perform any right-of-way services for which the City may contract. The City may enter agreements with other consultants or contractors to perform the same or similar services and reserves the right to select, at the discretion of the Director, the consultant which is the most cost effective, best suited, and/or most readily able to perform the requested services.

**2. TERM:** The term of the Agreement runs from October 1, 2015 to October 10, 2020, unless this Agreement is terminated earlier as provided in this Agreement or unless this Agreement is extended as provided in a separate amendment to this Agreement ("Term"). If the term of any Scope of Work extends beyond the Term specified above, this Agreement shall remain in full force and effect but only as to such Scope of Work; however, the total amount paid to the Consultant shall not exceed the Maximum Contract Amount specified in sub-section 3.c below.

**3. COMPENSATION AND PAYMENT:**

**a. Compensation.** The City agrees to pay to the Consultant, and the Consultant agrees to accept as its sole compensation for its services rendered and costs incurred under this Agreement, a fee to be agreed upon by the parties, but not to exceed, in total, the Maximum Contract Liability in subsection 3.c. below. The fee for individual projects

assigned to Consultant by the Director shall be as agreed to in the Scope of Work's budget prior to the commencement of work on the project by the Consultant, but in all cases will follow the appropriate Hourly Rate Schedule attached to this Agreement as **Exhibit B**. In addition, reimbursable expenses shall be those and only those outlined in **Exhibit A**; all other expenses are reflected in Consultant's hourly rates.

**b. Invoicing for Fees and Expenses:** Consultant shall submit invoices to the Project Manager monthly, or upon the delivery of the project to the City, whichever is earlier. For fees earned by the Consultant, all invoices will specify the work performed, the time to perform the work, and the rate at which the work is being charged. The Consultant shall invoice for each assigned project separately, but may be paid for multiple invoices each month. Such invoices shall reflect the Consultant's actual hours, sub-Consultant costs, total expended to date on each assigned project, additional and special services 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 sub-Consultants, records of all permissible reimbursable expenses and records of expendable supplies and services as necessary for any audits by the City, and shall bill the City monthly for fees and costs accrued during the preceding month. The Director or his designee will review and approve all invoices prior to payment by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

**c. Maximum Contract Amount:** Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of **FIVE MILLION DOLLARS AND ZERO CENTS (\$5,000,000.00)**. The Consultant acknowledges that the City is not obligated to execute an Agreement or an amendment to Consultant for any further services and that any services performed by Consultant beyond that specifically described in the Scope of Work described above are performed at Consultant's risk and without authorization under this Agreement.

The Parties agree that the City's payment obligation, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The Parties agree that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payment or

performance in future fiscal years and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**4. STATUS OF CONTRACTOR:** The parties agree that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1E(x) of the Charter of the City. It is not intended, nor shall it be construed, that the Consultant or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

**5. TERMINATION:**

**A.** The City has the right to terminate this Agreement, with or without cause, on thirty (30) days written notice to the Consultant. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Director. As a condition precedent to termination for cause the Consultant shall have the 30 day notice period to cure such cause and shall have failed to so cure.

**B.** The City may, by thirty (30) days written notice to the Consultant, terminate this Agreement in the event the Consultant or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Consultant's business.

**C.** If this Agreement is terminated by the City for cause, the Consultant shall be compensated for, and such compensation shall be limited to: (1) the sum of the amounts contained in invoices for fees and/ or expenses which it has submitted and which have been approved by the City; (2) the reasonable value to the City of the work which the Consultant 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 that is needed to accomplish an orderly termination of the work and is approved in writing by the Director. If this Agreement is terminated for the convenience of the City and without the fault of the Consultant, the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services prior to the date of the termination.

**D.** If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City that the Consultant is using by whatever method the City deems expedient. The Consultant shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City; and these documents and materials shall be the property of the City. Copies of work product incomplete at the time of termination shall be marked "DRAFT-INCOMPLETE". The City shall use any and all such incomplete documents or incomplete data at its own risk.

**E.** Upon termination of this Agreement by the City, the Consultant shall not have any claim against the City by reason of such termination or by reason of any act incidental to termination, except for compensation for work satisfactorily performed as described in this Agreement.

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

**7. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by a Party constitute or be construed to be a waiver by that party of any breach of covenant or default which may then exist on the part of the other Party. A 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.

**8. INSURANCE:**

**(1) 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, 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.

(2) **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 coverage. 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.

(3) **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Consultant and subcontractor’s insurer(s) shall name the City and County of Denver, its elected and appointed officials, and employees as additional insured.

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

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

(6) **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.

(7) **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.

(8) **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

(9) **Professional Liability (Errors & Omissions):** Consultant shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

**(10) Additional Provisions:**

- (a) 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 in excess of policy limits;
  - (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.
- (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) 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.

**9. INDEMNIFICATION:**

a. Consultant hereby 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 relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Consultant’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Consultant’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. 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.

**10. COLORADO GOVERNMENTAL IMMUNITY ACT:** The Parties 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, C.R.S. § 24-10-101, *et seq.*

**11. TAXES, CHARGES AND PENALTIES:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Consultant shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against City property, including but not limited to land, facilities, improvements or equipment.

**12. ASSIGNMENT AND SUBCONTRACTING:**

A. The Consultant agrees that it will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the Director. A transfer will include a merger, consolidation, liquidation or change of ownership by which fifty percent (50%) or more of the outstanding voting stock is transferred. Any attempt by the Consultant to assign or transfer its rights or obligations without the prior written consent of the

Director shall, at the option of the Director, terminate this Agreement and all rights of the Consultant. Consent to the assignment may be granted or denied at the sole and absolute discretion of the Director. If the City consents to an assignment, then any assignment will not become effective until the assignee unequivocally in a signed document satisfactory to the Director (1) assumes the obligations under this Agreement; and (2) agrees to be bound by all of the terms, covenants and conditions of this Agreement. Any consent of the City pursuant to this provision must be executed with the same formality as this Agreement. The rights and obligations of the Parties under this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns permitted under this Agreement.

**B.** The Consultant agrees that it will not subcontract any of its obligations under this Agreement without first obtaining the written consent of the Director, which consent may be withheld in the absolute discretion of the City. If the City consents to the subcontract, such action shall not be construed to create any contractual relationship between the City and the Consultant's subcontractor. The Consultant shall remain fully responsible to the City according to the terms of this Agreement.

**13. NO THIRD PARTY BENEFICIARY:** The Parties agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any claim or right of action to any third person. The Parties intend that any person other than the City or the Consultant receiving services or benefits pursuant to this Agreement shall be deemed to be an incidental beneficiary only.

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

**15. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written

amendment to this Agreement shall have any force or effect nor bind the City. This Agreement and any amendments to it shall be binding upon the Parties and their successors and assigns.

**16. SEVERABILITY:** The Parties agree that if any provision of this Agreement or any portion thereof, except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, 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 if the intent of the Parties can be fulfilled

**17. CONFLICT OF INTEREST:** The Parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement; and the Consultant further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

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.

**18. NOTICES:** Notices, bills, invoices or reports required by this Agreement shall be sufficiently delivered if sent by the Parties in the United States mail, postage prepaid, to the Parties at the following addresses:

City : Director of Real Estate  
201 West Colfax Avenue, Dept. 1010  
Denver, Colorado 80202

Consultant: HDR Engineering, Inc.  
1670 Broadway, Suite 3400

The addresses may be changed by the Parties by written notice.

**19. 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 Director.

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

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

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

**23. LEGAL AUTHORITY:** Consultant represents 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.

**24. 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 were prepared by a particular Party.

**25. ORDER OF PRECEDENCE:** . In the event of any conflicts between the language of this Agreement and the Scope of Work, the language of the Agreement shall control.

**26. SURVIVAL OF CERTAIN PROVISIONS:** The Parties agree that all terms and conditions of this Agreement, together with any exhibits and attachments, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement, by expiration of the term or otherwise, shall survive termination and shall continue to be enforceable. Without limiting the generality of this provision, the Consultant's obligations to provide 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.

**27. COMPLIANCE WITH ALL LAWS:** All of the services performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and State of Colorado and with the charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver, as amended.

**28. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

**a.** This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

**b.** The Consultant certifies that:

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

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Consultant also agrees and represents that:

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

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

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

(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 that otherwise requires the Consultant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a sub-Consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Consultant will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides

information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.

**29. 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.

**30. CITY EXECUTION OF AGREEMENT:** This Agreement shall not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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

**32. 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.

**SIGNATURES ON FOLLOWING PAGES**



**Contract Control Number:** FINAN-201523941-00

**Contractor Name:** HDR ENGINEERING INC

By: R. Bradley Martin

Name: R. Bradley Martin  
(please print)

Title: Senior Vice President  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Contract Control Number:**

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



## **EXHIBIT A**

The Contractor may perform one or more of the following tasks at the direction of the Director or Director's designee.

- **Due Diligence Activities:**

- Obtain and/or review title commitments; document all relevant information on a parcel by parcel basis.
- Create and update preliminary acquisition schedule; update in accordance with requirements listed below.
- Obtain vesting deeds and/or legal descriptions as needed.
- Identify any existing conditions that may impact the cost, schedule or logistics of acquiring real estate interests for the project.

- **Activities Related to Land Acquisition and Relocation:**

- Attend project meetings; create and maintain detailed land acquisition and relocation schedule for each interest to be acquired; show progress relating to the estimated completion of each acquisition as it relates to established milestones within the land acquisition schedule.
- Coordinate all necessary tasks associated with the City, other governmental agencies, project engineers, project appraisers and other applicable agencies and/or persons involved in the Project.
- Provide Chief Engineers Cost Estimate to the Colorado Department of Transportation ("CDOT") if needed for the project; update estimate if needed.
- Coordinate Right of Way ("ROW") plan approval including obtaining all clearances and other approvals needed from CDOT and/or other applicable governing agencies if needed for the project.
- Attend Right of Way Plan Review (ROWPR) meetings as needed, if needed for the project; document content of topics discussed in each meeting and distribute content to all appropriate parties.
- Prepare from City templates, review and assist with the negotiations of all legal documents necessary for land acquisition and relocation activities. Documents may include Purchase and Sale Agreements, Deeds, Railroad Agreements, License Agreements and Permanent and/or Temporary Agreements.
- Work with City Agencies to prepare estimates for acquisitions and relocations.

- **Appraisal and Appraisal Review Activities:**

- Coordinate and hire appraisers in consultation with the City.
- Work directly with the appraiser(s) and property owner(s) to coordinate all due diligence activities so the appraisal(s) for each acquisition can be drafted in accordance with the guidelines as established by the CDOT appraisal manual or other applicable guidelines.
- Coordinate appraisal process with title work plans and legal descriptions.
- Coordinate all activities to obtain a Fair Market Value (“FMV”) Report for each acquisition, if applicable.
- Prepare value findings when appropriate.
- The City, in its sole discretion, shall either select and/or approve all of the appraisers for each particular project and such appraisers shall be subcontractors of the Contractor.

- **Acquisition:**

- Coordinate the preparation, negotiation, execution and delivery of all necessary documents including:
  - Notices of intent to acquire
  - Offer letters and summary of just compensation
  - Final offer letters
  - Last written offer letters
  - Land acquisition and relocation documents
- Conduct negotiations with each owner for the acquisition of the needed property rights in accordance with all applicable Federal, State and City and County of Denver rules, regulations, statutes, ordinances and Executive Orders.
- Provide property management duties.
- Obtain all required documentation to ensure a successful closing of interests in real estate including partial releases/subordinations and tax pro-rations.
- Coordinate and attend all real estate closings.
- Provide escrow services as needed

- **Relocation:**

- Complete Acquisition Stage Relocation Plan (7-B Study) of affected properties.
- Interview relocatees to determine special relocation needs.
- Search for availability of suitable replacement sites.
- Determine if relocation can be accomplished in the time frame given.
- Prepare Relocation Determinations, payments requests and settle claims for moving costs.
- Obtain at least two moving estimates from commercial movers: present list of approved moving benefits to each business and offer relocation assistance as needed.

- **Closing Matters:**

- Obtain and update all title commitments as needed.
- Obtain title insurance based upon property final settlement amount or as otherwise directed by the City.
- Secure all necessary releases and/or subordination documents and associated costs.
- Coordinate and manage all activities in order to conduct a successful real estate closing for all acquisitions.
- Create, maintain and submit comprehensive project files for each closing. Said file shall include all pertinent documents related to closing of the acquisition.

- **Escrow Services:**

- Set up escrow account, funded by the project, and administer all payments for each project as directed by the City.
- Create and maintain a master spreadsheet of all escrow account activity; submit to City representative no less than once per month.

- **Litigation Support:**

- Supporting the City Attorney's Office with condemnation cases and provide litigation support including coordination with the appraiser, negotiator, and expert witnesses; assist with exhibits.

**Exhibit B**

**(Exhibit on Following Page)**

# Rates

HDR AND TRS 2015 RATES	
LABOR CATEGORY	2015 Hourly Billing Rate*
Project Principal	\$195
Contract/Project Manager	180
Project Manager - Acquisition/Relocation Supervisor	170
Railroad Specialist	170
Right of Way Acquisition/Relocation 3	130
Right of Way Acquisition/Relocation 2	100
Right of Way Acquisition/Relocation 1	85
Technician 3	80
Technician 2	75
Technician 1	70
GIS/Graphic Arts Specialist	95
CAD Technician	90
Project Controller	84
Word Processing/Clerical	65

PLEASE NOTE: A detailed scope will be provided for acquisitions on a project basis. HDR's team will negotiate a fee on a per acquisition basis that will be competitive to prevailing acquisition rates in the area.

PLEASE NOTE: Appraisals are typically quoted and charged on a per appraisal basis, i.e., Appraiser X will deliver Y number of appraisals for \$Z/appraisal. Appraisals are rarely procured on an hourly rate. The same is true for appraisal review. Appraisal review is typically charged on a per appraisal review of a certain appraisal assignment, i.e., Appraiser X will review Y appraisals at a rate of \$Z/appraisal. The RFQ asks for hourly rates so they are provided here.

APPRAISERS	
Bonnie D. Roerig & Associates, LLC	2015 Hourly Billing Rate*
Bonnie D. Roerig, MAI, AI-GRS	\$260
Appraisal Associates	150
Production/Clerical	110
Associated Value Consultants, Inc.	2015 Hourly Billing Rate*
Doug Nitzkorski, MAI, AI-GRS, SR/WA	\$150
Doug Nitzkorski, MAI, AI-GRS, SR/WA - Litigation Rate	250
Civil Technology, Inc.	2015 Hourly Billing Rate*
Charles Nelson, MAI	\$125
Charles Nelson, MAI - Litigation Rate	150
McCloud & Associates, Inc.	2015 Hourly Billing Rate*
Harold McCloud, MAI	\$175
Harold McCloud, MAI - Litigation Rate	275

ESCROW SERVICES
Escrow agreements to be determined to the mutual satisfaction of the City and County of Denver and HDR Engineering, Inc.

TITLE COMMITMENTS AND CLOSING FEES	
Front Range Title of Downtown Denver, LLC	2015 Rates*
Title Commitments	\$725 per Commitment
Closing Fee	\$375 per Closing
Title Insurance Policies are based on the amount of insurance requested, which is typically the amount of just compensation paid. Front Range has filed rates for the Denver Metro Area with the Colorado Department of Regulatory Agencies. Charges for policies will be pursuant to such filed rates.	

\*New rates will be negotiated for calendar years 2016, 2017, and 2018

**Exhibit C**

**(Exhibit on Following Page)**





# CERTIFICATE OF LIABILITY INSURANCE

6/1/2016

DATE (MM/DD/YYYY)

10/26/2015

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 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	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No, Ext):</b> _____	<b>FAX (A/C, No):</b> _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A :</b> Hartford Fire Insurance Company		19682
<b>INSURER B :</b> Travelers Property Casualty Co of America		25674
<b>INSURER C :</b> American Zurich Insurance Company		40142
<b>INSURER D :</b> Lexington Insurance Company		19437
<b>INSURER E :</b> _____		
<b>INSURER F :</b> _____		

**COVERAGES** HDRIN01      **CERTIFICATE NUMBER:** 13731464      **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 type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____	Y	Y	37CSEQU0950	6/1/2015	6/1/2016	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 \$
A A A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	Y	37CSEQU0951 (AOS) 37CSEQU0952 (HI) 37CSEQU1160 (MA)	6/1/2015 6/1/2015 6/1/2015	6/1/2016 6/1/2016 6/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$	Y	Y	ZUP-10R64084-15-NF (EXCLUDEDS PROF LIAB)	6/1/2015	6/1/2016	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ XXXXXXXX
C	<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	N/A	0381127	7/1/2015	7/1/2016	<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
D	<b>ARCHS &amp; ENGS PROFESSIONAL LIABILITY</b>	N	N	061853691	6/1/2015	6/1/2016	PER CLAIM: \$1,000,000 AGGREGATE: \$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 REAL ESTATE RIGHT OF WAY SERVICES - ON CALL. THE CITY AND COUNTY OF DENVER, ITS ELECTED AND APPOINTED OFFICIALS AND EMPLOYEES ARE NAMED AS ADDITIONAL INSURED ON GENERAL, AUTO, AND UMBRELLA LIABILITY AS PER WRITTEN CONTRACT, ON A PRIMARY, NON-CONTRIBUTORY BASIS. WAIVER OF SUBROGATION APPLIES WHERE ALLOWABLE BY LAW. 30 DAYS NOTICE OF CANCELLATION APPLIES, 10 DAYS NOTICE FOR NON-PAYMENT OF PREMIUM. SEVERABILITY OF INTEREST APPLIES.

**CERTIFICATE HOLDER**

13731464  
 CITY AND COUNTY OF DENVER  
 201 WEST COLFAX AVENUE  
 DEPT 210  
 DENVER CO 80202

**CANCELLATION**

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*

© 1988-2014 ACORD CORPORATION. All rights reserved.