

**ON-CALL COST ESTIMATING AND PRECONSTRUCTION PROFESSIONAL  
SERVICES AGREEMENT**

**between**

**THE CITY AND COUNTY OF DENVER**

**and**

**KIEWIT INFRASTRUCTURE CO.**

**Contract No. 201841435**

**THIS AGREEMENT** entered into between the **CITY AND COUNTY OF DENVER** (the "City"), a municipal corporation of the State of Colorado, and **KIEWIT INFRASTRUCTURE CO.** (the "Consultant"), a Delaware corporation registered to do business in Colorado, whose address is 160 Inverness Drive West, Suite 110, Englewood, Colorado 80112.

**RECITALS**

1. The City wishes to secure professional on-call construction cost estimating and preconstruction services to support multiple disciplines (Wastewater, Transportation and Facilities) for horizontal and vertical construction. The scope of work will include project budget cost estimates in various stages of Design, cost modeling, conceptual budget estimates, design development budget estimates, construction document estimates, trend estimating, value engineering, value analysis, preconstruction services and related services. on an "as needed" basis; and

2. The Consultant represents that its members include industry professionals and technical staff and that the Consultant has the present capacity, experience and qualifications to perform professional cost estimating and preconstruction services for the City in connection with the scope of work under this Agreement for various City projects; and

3. In response to the City's Request for Qualifications, the Consultant submitted a Proposal for such services to the City. The Consultant and the City have negotiated a basic Scope of Services and Rates for such professional services, copies of which are attached hereto and incorporated herein as **Exhibit A** and **Exhibit B**.

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

**SECTION 1 – ENGAGEMENT**

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

**1.02 Line of Authority for Contract Administration.** The City's Executive Director of the Department of Public Works ("Manager") is the City's representative responsible for authorizing and approving the work performed under this Agreement. The Manager hereby designates the City Engineer as the Manager's authorized representative for the purpose of issuing a written Notice to

Proceed and administering, coordinating and initially approving the services performed by the Consultant under this Agreement. The Project Manager, who reports to the City Engineer shall be responsible for the day-to-day administration, coordination and approval of services performed by the Consultant, except for approvals that are specifically identified in this Agreement as requiring the Manager's approval.

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

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

## SECTION 2 – CONSULTANT'S SERVICES

**2.01 General.** The Consultant shall provide professional on-call construction cost estimating and preconstruction services as assigned by written task order, on an as-needed basis, in accordance with the terms and conditions of this Agreement.

### **2.02 Professional Responsibility; Project Requirements.**

- (a) All of the work performed by the Consultant under this Agreement shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform work of a nature similar to the Work described in this Agreement.
- (b) The Consultant agrees to strictly conform to and be bound by written standards, criteria, budgetary considerations and memoranda of policy furnished to it by the City and further agrees that all deliverables will comply with all applicable laws, statues, codes, ordinances, rules and regulations, and industry standards.
- (c) All professional services and deliverables provided under this Agreement shall be adequate and sufficient for their intended purpose.
- (d) In the event Consultant prepares drawings or specifications they shall be consistent with all applicable laws, statutes, codes, ordinances, rules, regulations and executive orders of the City, state and federal government.
- (e) All deliverables and other documents prepared shall be in a format that complies with all City, state and federal requirements. It shall be the Consultant's responsibility to contact the reviewing agencies to determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though any responsible federal and state agencies have approved such documents.
- (f) All deliverables prepared by the Consultant under this Agreement, when submitted by the Consultant to the Manager and the user agency must represent a thorough study and competent solution as per usual and customary professional standards and shall reflect all

construction cost estimating and preconstruction services skills applicable to the assigned task.

- (g) The responsibilities and obligations of the Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any employee, agent, consultant or subconsultant of the City.
- (h) The Consultant shall provide all professional services required by the City in defending all claims against the City, which relate in any way to alleged default hereunder, errors or omissions of the Consultant or its subconsultants, without additional compensation.

### **2.03 Program and Budget.**

- (a) The Consultant agrees to discuss the City's program and budget for each assigned task with the Project Manager and further agrees, unless it has notified the City in writing that the task cannot be accomplished within such budget, to accomplish the task within the intent of the program and final proposal cost. Should the Consultant determine that an assigned task cannot be accomplished within the final proposed cost, the Consultant shall immediately notify the Project Manager, in writing and well in advance of completing the task.
- (b) Consultant shall prepare a proposal with a maximum estimated fee for a particular task. Consultant agrees to complete the task within the limits of the approved final proposal cost, unless otherwise modified by the City. Should all task work exceed such cost, the Consultant agrees to complete the Task at no additional cost to City and, in a manner acceptable to the City.

### **2.04 Coordination and Cooperation.**

- (a) The Consultant agrees to perform under this Agreement in such a manner and at such times that the City or any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.
- (b) Coordination with the City and other involved agencies shall be a continuing work item through all phases of each assigned task. Such coordination shall consist of regular progress and review meetings with the City, work sessions with Project Managers, or as otherwise directed by the City. Such coordination may also include field and office reviews of plans and documents as required during the development of the design for any specific task. If requested, the Consultant shall document conferences and distribute notes to the City.

### **2.05 Personnel Assignments.**

- (a) The key professional personnel identified in **Exhibit B** will be assigned by the Consultant or its subconsultants to perform the services required under this Agreement, as appropriate.
- (b) The Consultant's services shall be diligently performed by the regular professional and technical staff of the Consultant. In the event the Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with City approval, by practicing professional consultants outside of the employ of the Consultant.

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

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

## 2.06 Basic Services – General.

- (a) The Consultant shall, under the general direction of and at the written request of the Manager, furnish experienced cost estimating and preconstruction personnel to support the Department's existing personnel. Subject to an express, agreed upon limitation of such duties set forth in any approved task proposal for the particular task assigned to the Consultant under this Agreement, the Consultant agrees to perform all of the services and duties set forth in this Agreement in regard to each task to which it is assigned and its proposal is approved.
- (b) When directed by the Manager to perform a particular task, the Consultant shall prepare a task specific proposal in accordance with the scope or description of Work for that task. A separate task specific proposal shall be prepared for each task for which the Consultant's services are required and shall set forth, at a minimum all of the following:
  - (1) A not to exceed maximum fee for the Consultant's proposed services.
  - (2) Itemized fee breakdown. No markup will be allowed on basic services or reimbursables.
  - (3) The additional services budget, if any, for the task.
  - (4) Any reimbursable expenses approved pursuant to paragraph 3.02.
  - (5) A detailed description of the task and scope of work (the "Work").
  - (6) A list of deliverables for the task.
  - (7) An agreed upon schedule for deliverables and completion of the Work.
- (c) Upon approval by the Manager of a task proposal, the approval and appropriation of funding for such task, and the issuance of a written Notice to Proceed, the Consultant shall proceed to perform the Work.
- (d) The assigned task shall be performed in conformance with the approved task specific proposal. The terms of this Agreement cannot be altered by task order.
- (e) The Consultant's basic services for each task may consist of any one or combination of the anticipated services described below, in **Exhibit A** or services related to the services described in this Agreement.
- (f) The Consultant shall not proceed with any Task until a Notice to Proceed is execute by the City and issued to the Consultant.
- (g) Nothing in this Agreement shall be construed as placing any obligation on City to proceed with any task beyond the latest task authorized in writing by City. Further, nothing in this Agreement shall be construed as guaranteeing the Consultant any minimum amount of Work or number of tasks assigned under this Agreement.
- (h) If a task which is assigned to the Consultant under this Agreement is funded in whole or part by federal funds, or any other funding source, each of the applicable terms set forth in any funding arrangement for such funds shall be, and by this reference are

incorporated into the task specific proposal for such task, and included in the Consultant's basic services responsibilities for such task.

- (i) The responsibilities and obligations of the Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant, subconsultant, or employee of the City.

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

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

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

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

**3.03 Additional Services.** The Consultant shall only be compensated for additional services if the additional services are approved in advance by written task order and subject to an additional services budget for that specific task.

**3.04 Invoices.** The Consultant shall invoice and be paid monthly based on hours worked at hourly rates included in **Exhibit B**, reimbursable expenses and additional services all subject to the maximum task order amount and the Maximum Contract Amount. Such invoices shall reflect the Consultant's actual hours, sub-consultant costs and reimbursable costs, and shall be based on the hourly rates or other rates for services contained in **Exhibit B**. The rates contained in **Exhibit B** can be modified only by a written amendatory or other agreement executed by the parties and signed by the signatories to this Agreement in accordance with Section 5.27. The Consultant shall maintain contemporaneous hourly records of the actual hours worked by its personnel and subconsultants, records of all allowable reimbursable expenses, and records of expendable supplies and services as necessary to support any audits by the City, and shall bill the City monthly for fees and costs accrued during the preceding month. The Consultant's invoice shall be separated by task order. Upon submission of such invoices to the City Project Manager, and approval by the City, payment shall issue. Final payment to the Consultant, for each assigned task, shall not be made until after the task is accepted and deliverables are delivered to the City, and the duties agreed to in the approved task proposal for that task are otherwise fully performed by the Consultant.

#### **3.05 Maximum Contract Amount; Funding.**

- (a) It is understood and agreed by the parties hereto that payment or reimbursement of all kinds to the Consultant, for all Work performed under this Agreement, shall not exceed a maximum of **SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$750,000.00)**. In no event shall the maximum payment to the Consultant, for

all work and services performed throughout the entire term of this Agreement exceed the contract maximum amount set forth above.

- (b) Notwithstanding any other term, provision, or condition herein, all payment obligations under this Agreement shall be limited to the funds duly and lawfully appropriated and encumbered or otherwise made available by the Denver City Council under this Agreement for the particular year(s) in which this Agreement is in effect and paid into the Treasury of the City. As of the date of this Agreement, no funds have been appropriated for this Agreement. Instead, it is the City's intent to appropriate the funds necessary to compensate the Consultant for the work it performs on any assigned task, at the time it accepts each proposal for a specific task. The Manager of Finance, upon reasonable written request, will advise the Consultant in writing of the total amount of appropriated and encumbered funds which are or remain available for payment for all work by the Consultant on a specific task.
- (c) The issuance of any form of order or directive by the City which would cause the aggregate amount payable to the Consultant for a specific task to exceed the amount appropriated for the Consultant's work on a specific task is expressly prohibited. In no event shall the issuance of any change order or other form of order or directive by the City be considered valid or binding if it requires additional compensable work to be performed, which work will cause the aggregate amount payable for such work to exceed the amount appropriated and encumbered, unless and until such time as the Consultant has been advised in writing by the Manager of Public Works that a lawful appropriation sufficient to cover the entire cost of such additional work, has been made. It shall be the responsibility of the Consultant to verify that the amounts already appropriated for the Consultant's Work on a task are sufficient to cover the entire cost of such Work, and any work undertaken or performed in excess of the amount appropriated is undertaken or performed in violation of the terms of this Agreement, without the proper authorization for such work, and at the Consultant's own risk and sole expense.

### **3.06 Appropriation and Funding.**

- (a) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- (b) As of the date of this Agreement, no funds have been appropriated for this Agreement. Instead, it is the City's intent to appropriate the funds necessary to compensate the Consultant for the work it performs on any assigned Project, at the time it executes the Task Order for a Project. The applicable Manager or his designee, upon reasonable written request, will advise the Consultant in writing of the total amount of appropriated and encumbered funds which are or remain available for payment for all work by the Consultant on an assigned Project.
- (c) The issuance of any form of order or directive by the City which would cause the aggregate amount payable to the Consultant for a specific Project to exceed the amount appropriated for the Consultant's work on that Project is expressly prohibited. In no event shall the issuance of any form of order or directive by the City be considered valid

or binding if it requires additional compensable services to be performed, which would cause the aggregate amount payable for such services to exceed the amount appropriated and encumbered, unless and until such time as the Consultant has been advised in writing by the applicable Department Manager that a lawful appropriation sufficient to cover the entire cost of such additional work, has been made. Consultant shall work with the City to verify that the amounts already appropriated for the Consultant's services on a Project are sufficient to cover the entire cost of such services. Any services undertaken or performed in excess of the amount appropriated is undertaken or performed in violation of the terms of this Agreement, without the proper authorization for such work, and at the Consultant's own risk and sole expense.

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

**4.01 Term.** The term of this Agreement shall commence on July 1, 2018 and shall expire on June 30, 2021, unless sooner terminated or extended by written amendment. The Consultant shall complete any task orders in progress as of the expiration date of this agreement and the term will extend until the work is completed or earlier terminated by the Manager. The term of this agreement may be extended for one additional year at the City's sole discretion by written amendment.

**4.02 Termination.**

- (a) Nothing herein shall be construed as giving the Consultant the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the Manager.
- (b) The Manager may terminate this Agreement for cause at any time if the Consultant's services become unsatisfactory, in the sole discretion of the Manager. The City shall have the sole discretion to permit the Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.
- (c) In the event of a termination for cause, or in the event the Consultant becomes unable to serve under this Agreement, the City may take over work to be done under this Agreement and prosecute the work to the completion by contract or otherwise, and the Consultant shall be liable to the City for all reasonable cost in excess of what the City would have paid the Consultant had there been no termination for cause.
- (d) The City may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) days' prior written notice to the Consultant, which notice shall state the date of cancellation and termination.
- (e) If the Consultant's services are terminated, postponed or revised, or if the Consultant shall be discharged before all the work and services contemplated have been completed, or if the task is, for any reason, stopped or discontinued, the Consultant shall be paid only for the portion of work or services which has been satisfactorily completed at the time of such dismissal, termination, cancellation, postponement, revision or stoppage.
- (f) All documents relating to the work completed or partially completed shall be delivered by the Consultant to the City in the event of any dismissal, termination, cancellation, postponement, revision or stoppage.
- (g) In the event of any dismissal, termination, cancellation, postponement, revision or stoppage, the Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, assisting the City during a transition to another Consultant, if applicable.



## **SECTION 5 – COMPLIANCE WITH M/WBE REQUIREMENTS**

**5.01** This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 to 28-36 and 28-52 to 28-90 (the “M/WBE Ordinance”) and any Rules or Regulations promulgated pursuant thereto. The Consultant identified in its Proposal MBE and/or WBE firms with which it intends to subcontract under this Agreement, with a total participation level by such firms of **17%**.

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

## **SECTION 6 – GENERAL PROVISIONS**

## **6.01 City's Responsibilities.**

- (a) The City shall provide available information regarding its requirements for each task, including related budgetary information, and shall cooperate fully with the Consultant at all times. However, the City does not guarantee the accuracy of any such information and assumes no liability therefore. The Consultant shall notify City in writing of any information or requirements provided by the City which the Consultant believes to be inaccurate or inappropriate to the design or construction of the task.
- (b) If the City observes or otherwise becomes aware of any fault or defect in the task or non-conformance with Contract Documents, it shall give prompt notice thereof to Consultant.

**6.02 Ownership of Documents.** Engineering documents and deliverables, and all data used in the development of the same, including the results of any tests, surveys or inspections at each project site, and all photographs, drawings, drafts, studies, estimates, reports, models, notes and any other materials or work products, whether in electronic or hard copy format, created by the Consultant pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the "Documents"), whether the task for which the Documents were created is executed or not. The Consultant shall identify and disclose, as requested, all such Documents to the City.

- (a) To the extent permitted by the U.S. Copyright Act, 17 USC § 101 *et seq.*, as the same may be amended from time to time, the Documents are a "work made for hire," and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a "work made for hire," the Consultant hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.
- (b) The Consultant shall provide (and cause its employees and subcontractors to provide) all assistance reasonably requested in securing for the City's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City's name, all rights to such Documents.
- (c) The Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder.
- (d) The Consultant shall be permitted to retain reproducible copies of all of the Documents for their information and reference, and the originals of all of the Documents, including all CAD disks, shall be delivered to the City promptly upon completion thereof, or if authorized by the City's Project Manager, upon termination or expiration of this Agreement.
- (e) If the City reuses Documents prepared by the Consultant other than for their intended use or at a new location without the Consultant's approval, the City will have no claim against the Consultant arising out of any alleged defects, deficiencies or flaws in the Documents.

**6.03 Taxes and Licenses.** The Consultant shall promptly pay, when they are due, any taxes, license fees of whatever nature applicable to the work and services which it performs under this Agreement and shall take out and keep current all required municipal, county, state or federal licenses required to perform its services under this Agreement. The Consultant shall furnish the Manager, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes. The Consultant shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and shall not cause any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations.

**6.04 Consultant's Records / Examination of Records.** Records of the Consultant's direct personnel, Consultant's sub consultants and records of reimbursable expenses pertaining to this Agreement shall be kept on a generally recognized accounting basis. The Consultant agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the Consultant, involving transactions related to this Agreement.

**6.05 Assignment and Subcontracting.** The City is not obligated or liable under this Agreement to any party other than the Consultant named herein. The Consultant understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting. Any attempt by the Consultant to assign or subcontract its rights hereunder without such prior written consent of the City shall, at the option of the City, automatically terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the City. In the event any such subcontracting shall occur, with the City's approval, such action shall not be construed to create any contractual relationship between the City and such subcontractor, and the Consultant named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

**6.06 No Discrimination in Employment.** In connection with the performance of work under this Agreement, the Consultant 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, gender identity or gender expression, marital status, or physical or mental disability. The Consultant agrees to insert the foregoing provision in all subcontracts hereunder.

**6.07 Insurance.**

- (a) General Conditions. Consultant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Consultant shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on

the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Consultant. Consultant shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant. The Consultant shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- (b) Proof of Insurance. Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Consultant certifies that the certificate of insurance attached as Exhibit C, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Consultant's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- (c) Additional Insureds. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Consultant and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- (d) Waiver of Subrogation. For all coverages required under this Agreement, with the exception of Professional Liability - if required, Consultant's insurer shall waive subrogation rights against the City.
- (e) Subcontractors and Subconsultants. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Consultant. Consultant shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Consultant agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
- (f) Workers' Compensation/Employer's Liability Insurance. Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Consultant expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Consultant's officers or employees who

may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Consultant executes this Agreement.

- (g) Commercial General Liability. Consultant shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- (h) Business Automobile Liability. Consultant shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- (i) Professional Liability (Errors & Omissions). Consultant shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- (j) Additional Provisions.
  - (1) For Commercial General Liability, the policies must provide the following:
    - (i) That this Agreement is an Insured Contract under the policy;
    - (ii) Defense costs are outside the limits of liability;
    - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
    - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
  - (2) For claims-made coverage:
    - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
  - (3) Consultant shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Consultant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

## **6.08 Defense and Indemnification.**

- (a) To the fullest extent permitted by law, the Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of the Consultant or the Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.
- (b) Consultant's obligation to defend and indemnify may be determined after Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or

otherwise resolved by mutual agreement between the parties. Consultant's duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.

- (c) Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
- (d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- (e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

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

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

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

In the event of an irreconcilable conflict between a provision of Sections 1 through 6 and the listed exhibits, or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in the following order:

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

**6.11 When Rights and Remedies Not Waived.** In no event shall any payment by the City constitute a waiver of any breach of covenant or default which may then exist on the part of the Consultant. No assent, expressed or implied, to any breach of the Agreement shall be held to be a waiver of any later or other breach.

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

Charter and Code, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

### **6.13 Conflict of Interest.**

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

**6.14 No Third-Party Beneficiaries.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the parties that any person other than the City or the Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**6.15 Time is of the Essence.** The parties agree that in the performance of the terms, conditions and requirements of this Agreement by the Consultant, time is of the essence.

**6.16 Taxes, Charges and Penalties.** The City and County of Denver shall not be liable for the payment of taxes, late charges, or penalties of any nature except as provided in the City's Prompt Payment Ordinance.

**6.17 Proprietary or Confidential Information.**

- (a) **City Information.** The Consultant acknowledges and accepts that, in performance of its work under the terms of this Agreement, the Consultant may have access to Proprietary Data or confidential information which may be owned or controlled by the City and that the disclosure of such data or information may be damaging to the City or third parties. As such, the Consultant agrees that all information provided or otherwise disclosed by the City to the Consultant be held in confidence and used only in the performance of its obligations under this Agreement. The Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall include, but not be limited to, geographic materials or Geographic Information Systems ("GIS") data owned by the City and County of Denver including but not limited to maps, computer programs, aerial photography, methodologies, software, diagnostics and documents; or any other materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.
- (b) **Consultant's Information.** The Consultant understands that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise the Consultant of such request in order to give the Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

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

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

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



- (b) The Consultant certifies that:
  - (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
  - (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- (c) The Consultant also agrees and represents that:
  - (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
  - (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Consultant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
  - (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
  - (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.
- (d) The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.

**6.20 Disputes.** All disputes between the City and Consultant regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et*

*seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Manager.

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

**6.22 Survival of Certain Contract Provisions.** The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement, (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Consultant’s obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.”

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

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

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

- to the City: Executive Director of Public Works  
201 West Colfax Avenue, Dept. 608  
Denver, Colorado 80202
  
- with a copy to: Assistant City Attorney  
201 West Colfax Avenue, Dept. 1207  
Denver, Colorado 80202
  
- to the Consultant: Kiewit Infrastructure Co.  
160 Inverness Drive West, Suite 110  
Englewood, Colorado 80112

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

**6.26 Severability.** It is understood and agreed by the parties hereto that, if any part, term, or provision of this Agreement, except for the provisions of this Agreement requiring prior appropriation and limiting the total amount to be paid by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

**6.27 Agreement as Complete Integration-Amendments.** This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories to the original Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

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

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**Contract Control Number:**

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PWADM-201841435-00

**Contractor Name:** Kiewit Infrastructure Co.

By: 

Name: Christopher J. Kromwiede  
(please print)

Title: Senior Vice President  
(please print)

**ATTEST: [if required]**

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

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

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



**Exhibit A**  
**Scope of Work**

# EXHIBIT A – SCOPE OF WORK

## GENERAL SCOPE OF WORK OVERVIEW

Through the On-Call/Task Order process, the Consultant will perform various requested Construction Cost Estimating Services and/or a variety of Preconstruction Services. The departments anticipated to participate in these services include, but are not limited to, Capital Projects Management, Implementation, Transportation, Facilities, Wastewater Management, and Transportation and Mobility. The Scope of the Work will include, but not be limited to, Project Budget Cost Estimates in various stages of Design, Cost Modeling, Conceptual Budget Estimates, Design Development Budget Estimates, Construction Document Estimates, Trend Estimating, Value Engineering, Value Analysis, Preconstruction Services, Scheduling and various other requests specific to Cost Estimating and Preconstruction Services.

Generally, the two major project categories for which Services will be performed are Horizontal / Infrastructure Construction and Vertical Construction. The Services for Horizontal / Infrastructure work scope may include, without limitation herein, all utility work above grade and/or below grade, road work, elevated structures, below grade structures, earthwork, environmental, unclassified soils abatement and remediation, concrete curb and gutter, concrete paving, asphalt paving, traffic signals and other traffic or pedestrian related signaling, traffic control, general conditions costs, landscaping and irrigation, and other related work. The Services for Vertical scope may include all buildings, structures not customarily included with horizontal construction, general conditions costs, and other related work.

The following disciplines shall be included as a minimum for **Horizontal / Infrastructure Work**:

1. Site Utilities and Earthwork
2. Cast in Place Concrete Work
3. Precast Concrete
4. Asphalt Paving
5. Environmental
6. Landscaping and Irrigation
7. Traffic Control
8. Roadwork, Signaling, Signage and Pavement Markings
9. Specialties for Site Work
10. Other related Horizontal / Infrastructure work disciplines

The following disciplines shall be included as a minimum for **Vertical Construction Work**:

1. All General Building components including, but not limited to;
2. Earthwork
3. Building Foundations
4. Building Structural Work
5. Exterior Building Envelope
6. Interior Building Finish Work and Fit-up
7. Specialties
8. HVAC, Plumbing, Fire Suppression, and Controls
9. Environmental
10. Special Systems
11. Electrical Work and low voltage
12. Commissioning
13. Other related building work disciplines

### **WORK DESCRIPTION FOR SERVICES**

The Construction Cost Estimating Consultant(s) will possess proper cost estimating for all various scopes of work whether provided directly by the Prime Construction Cost Estimating Consultant or provided by one of their Sub-consultants working with them to support all facets of the various Vertical or Horizontal work scopes. The work of the Consultant may consist of different types of estimates at various stages in the programming, conceptual, design and other phases as identified. The following list represents some of the types, scope and timing of estimates which may be requested:

- Types of Cost Estimates
  - Programmatic
  - Cost Model
  - Conceptual
  - Schematic
  - Design Development
  - Construction Documents
  
- Estimate Scope of Work
  - Site Utilities, Roadway Utilities
  - Roadwork and appurtenances
  - Earthwork, Excavation and Backfill
  - Demolition, Hazardous Materials Abatement



- Concrete Work
- Structural Work
- Traffic Signals and Multi-Modal
- CDOT Work
- Environmental

**Exhibit B**  
**List of Key Personnel**

**ATTACHMENT 2**  
**CONSULTANT TEAM MEMBERS**

**PRIME CONSULTANT:** Kiewit Infrastructure Co.

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

Title/Classification	Responsibilities	Rate/Hr.
Principal	Provides senior-level client contact and service. Ultimately responsible for team performance.	\$300.00
Project Manager	Preconstruction services, estimating, and contract oversight	\$246.00
Vertical Constructability Manager	Preconstruction services and estimating	\$235.00
Superintendent	Preconstruction services and estimating	\$180.00
Engineer 2	Preconstruction services and estimating	\$150.00
Scheduler	Schedule analysis at each phase of design	\$198.00
Engineer Document Control	Documentation filing and dissemination	\$140.00
Discipline Engineer	Preconstruction services, field inspection, and estimating	\$150.00
Business Manager	Cost control and invoicing	\$140.00
Preconstruction Manager	Management of all preconstruction services	\$186.00
Environmental Manager	Environmental analysis and estimating	\$154.00
Survey Manager	Field survey and data collection	\$170.00
Senior Estimator	Manage estimate process, estimators, and estimate review	\$195.00
Lead Estimator	Leads estimate and estimate reviews	\$173.00
Estimator Engineer	Quantity take-offs, production rates, and resource allocation for pricing	\$140.00

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

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

**REIMBURSABLE EXPENSES**

Prime Consultant: Kiewit Infrastructure Co.

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

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

**Actual Costs**

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

\*Reimbursable items will be identified on a task by task basis and will be reimbursed by the City and County of Denver at cost with no mark-up.



### SUB-CONSULTANT TEAM MEMBERS

Firm Name: Triunity Engineering & Management, Inc.

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

Title/Classification	Responsibilities	Rate/Hr.
Administration Support	Administration and Clerical Support	\$94.00
Civil Engineer Lead	Civil design	\$209.00
Civil Engineer II	Civil design	\$189.00
Civil Engineer I	Civil design	\$161.00
Civil/Structural Inspector Lead	Civil/Structural Field Inspections	\$172.00
Civil/Structural Inspector II	Civil/Structural Field Inspections	\$147.00
Civil/Structural Inspector I	Civil/Structural Field Inspections	\$124.00
Construction Manager	Construction Phasing, Constructability Reviews	\$178.00
Construction Safety	Construction Field Safety	\$130.00
Drafting Lead	CAD & Drafting	\$128.00
Drafter I	CAD & Drafting	\$106.00
Electrical Engineer Lead	Electrical and Systems Engineering Lead	\$272.00
Electrical Engineer II	Electrical and Systems Engineering Lead	\$233.00
Electrical Engineer I	Electrical and Systems Engineering Support	\$194.00
Electrical Inspection Lead	Electrical Field Inspections	\$189.00
Electrical Inspection II	Electrical Field Inspections	\$161.00
Electrical Inspection I	Electrical Field Inspections	\$128.00
ITS/Traffic Senior	Traffic and ITS Design and Analysis	\$233.00
ITS/Traffic Engineer II	Traffic and ITS Design and Analysis	\$189.00
ITS/Traffic Engineer I	Traffic and ITS Design and Analysis	\$161.00
Project Controls Manager	Project Management, Project Controls Lead	\$244.00
Project Controls II	Scheduling, Estimating, Contract Admin	\$194.00
Project Controls I	Scheduling, Estimating, Contract Admin	\$139.00
Project Manager Senior	Project Management Functions	\$283.00
Project Manager II	Project Management Functions	\$211.00
Project Manager I	Project Management Functions	\$156.00
Utility Coordinator Lead	Utility Coordination	\$206.00
Utility Coordinator II	Utility Coordination	\$178.00
Utility Coordinator I	Utility Coordination	\$144.00

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.6683

**Confidential and Proprietary**



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

### **REIMBURSABLE EXPENSES**

Firm Name: Triunity Engineering & Management, Inc.

(Consultant may copy this page or modify it to conform to the services being offered.)

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

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

<u>Item</u>	<u>Actual Costs</u>	<u>Charge Rate</u>
External Printing (as requested)		Billed at cost
Travel cost for non-local staff (as requested)		Billed at cost

**Exhibit C**  
**Insurance**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/20/2018

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

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

<b>PRODUCER</b> Midwest Agencies, Inc. 3555 Farnam Street Omaha, NE 68131	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"><b>CONTACT NAME:</b> Traci Sutton</td> </tr> <tr> <td><b>PHONE (A/C. No. Ext):</b> 402-271-2956</td> <td><b>FAX (A/C. No.):</b> 402-271-2997</td> </tr> <tr> <td colspan="2"><b>E-MAIL ADDRESS:</b> Traci.Sutton@Midwestagenciesinc.com</td> </tr> <tr> <td colspan="2" style="text-align: center;"><b>INSURER(S) AFFORDING COVERAGE</b></td> </tr> <tr> <td><b>INSURER A:</b> Old Republic Insurance Company</td> <td style="text-align: right;"><b>NAIC #</b> 24147</td> </tr> <tr> <td><b>INSURER B:</b> North American Specialty Insurance Co</td> <td style="text-align: right;">29874</td> </tr> <tr> <td><b>INSURER C:</b></td> <td></td> </tr> <tr> <td><b>INSURER D:</b></td> <td></td> </tr> <tr> <td><b>INSURER E:</b></td> <td></td> </tr> <tr> <td><b>INSURER F:</b></td> <td></td> </tr> </table>	<b>CONTACT NAME:</b> Traci Sutton		<b>PHONE (A/C. No. Ext):</b> 402-271-2956	<b>FAX (A/C. No.):</b> 402-271-2997	<b>E-MAIL ADDRESS:</b> Traci.Sutton@Midwestagenciesinc.com		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>INSURER A:</b> Old Republic Insurance Company	<b>NAIC #</b> 24147	<b>INSURER B:</b> North American Specialty Insurance Co	29874	<b>INSURER C:</b>		<b>INSURER D:</b>		<b>INSURER E:</b>		<b>INSURER F:</b>	
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<b>INSURER F:</b>																					
<b>INSURED</b> Kiewit Infrastructure Co. 160 Inverness Dr. West, Suite 110 Englewood CO 80112																					

**COVERAGES** **CERTIFICATE NUMBER:** 41458771 **REVISION NUMBER:**

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

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 <input checked="" type="checkbox"/> Contractual <input checked="" type="checkbox"/> XCU Included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	MWZY 312911-18	3/1/2018	3/1/2019	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$2,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	MWTB 312910	3/1/2018	3/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	EXS 2000809	3/1/2018	3/1/2019	EACH OCCURRENCE \$23,000,000 AGGREGATE \$23,000,000 \$
A	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	<input checked="" type="checkbox"/>	MWC 312908 MWXS 312909 USL&H & Jones Act Stop Gap	3/1/2018 3/1/2018	3/1/2019 3/1/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$5,000,000 E.L. DISEASE - EA EMPLOYEE \$5,000,000 E.L. DISEASE - POLICY LIMIT \$5,000,000

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

As Required by written contract, the City and County of Denver, its Elected and Appointed officials, Employees and Volunteers are included as additional insureds.

RE: Contract Number 201841435

<b>CERTIFICATE HOLDER</b>  City and County of Denver 201 W. Colfax, Ste. 614 Denver CO 80202	<b>CANCELLATION</b>  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  Philip G. Dehn
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