

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **WESTOVER CORPORATION**, a Colorado corporation, with its principal place of business located at 6580 North Federal Blvd, Denver, CO 80221 (the “Contractor”), collectively “the Parties.”

The parties agree as follows:

1. COORDINATION AND LIAISON: The Contractor shall fully coordinate all services under the Agreement with the City’s Chief Librarian, (“Manager”) or, the Manager’s Designee.

2. SERVICES TO BE PERFORMED:

a. Phase 1: As the Manager directs, the Contractor shall diligently undertake, perform, and complete all of the services and provide all deliverables set forth on **Exhibit A**,

b. The Contractor is ready, willing, and able to provide the services required by this Agreement.

c. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. TERM: The Agreement will commence on January 1, 2014 and will expire on December 31, 2018 (the “Term”).

4. COMPENSATION AND PAYMENT:

a. Fee: The City shall pay and the Contractor shall accept as the sole compensation for the services rendered and costs incurred under the Agreement the amounts listed in **Exhibit A**, and the amounts billed may not exceed the amounts or rates set forth in **Exhibit A**.

b. 2016, 2017, 2018 Fee: In the event that the City, in its sole discretion, elects to proceed with years 2016, 2017, 2018 services Contractor’s compensation will be incorporated by written amendment.

c. Reimbursable Expenses: There are no reimbursable expenses allowed under the Agreement. All of the Contractor’s expenses are contained in the pricing set forth in **Exhibit A**.

d. Invoicing: Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required

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.

e. Maximum Contract Amount:

- (1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **FIVE HUNDRED FIFTY THOUSAND DOLLARS** (\$550,000.00) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement.
- (2) 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. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. STATUS OF CONTRACTOR: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor 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

6. TERMINATION:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor 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 Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE."

7. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

9. **INSURANCE:**

a. **General Conditions:** Contractor 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. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor 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 Contractor. The Contractor 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: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as **Exhibit B** preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor'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, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages, Contractor'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 Contractor. Contractor 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. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

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

f. Commercial General Liability: Contractor 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.

g. Business Automobile Liability: Contractor 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

h. N/A

i. Additional Provisions:

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

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs 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) Contractor 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 Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

10. DEFENSE AND INDEMNIFICATION:

a. Contractor 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 Contractor 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. Contractor’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. Contractor’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. Contractor 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 Contractor under the terms of this indemnification obligation. The Contractor 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.

11. TAXES, CHARGES AND PENALTIES: The City is not 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 Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property

12. ASSIGNMENT; SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

13. INUREMENT: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

14. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

15. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Contractor 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 Denver Revised Municipal Code.

16. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

17. CONFLICT OF INTEREST:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that 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.

b. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor 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 Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

18. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

City Librarian
C/O Director of Community Relations
Denver Public Library
10 W. 14th Avenue Parkway
Denver CO 80204-2731

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the

U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor 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 Contractor 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 Contractor from submitting bids or proposals for future contracts with the City.

20. DISPUTES: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.

21. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

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

23. COMPLIANCE WITH ALL LAWS: Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

24. LEGAL AUTHORITY: Contractor 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 the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

25. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

26. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. INTELLECTUAL PROPERTY RIGHTS: The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Contractor shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

28. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will 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.

29. ADVERTISING AND PUBLIC DISCLOSURE: The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

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

31. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

32. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A 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 contract personnel being barred from City facilities and from participating in City operations.

33. COUNTERPARTS OF THE AGREEMENT: The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

34. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor 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.

35. PREVAILING WAGES:

A. Employees of the Contractor or the Contractor's subcontractors are subject to the payment of prevailing wages pursuant to § 20-76 *et seq.*, D.R.M.C.

B. The Contractor shall pay every Covered Worker, as defined in § 20-76(a) D.R.M.C., a living wage as provided in § 20-76, D.R.M.C. Prevailing Wage schedule incorporated herein as Exhibit C.

C. In accordance with § 20-76(b) and (d), D.R.M.C., the following mandatory provisions are included:

1. The minimum wages to be paid for every Covered Worker shall be not less than the scale of wages from time to time determined under § 20-76(b) and (c) to be the prevailing wages.

2. The Contractor or its subcontractor shall pay Covered Workers employed directly upon the site of the work the full amounts accrued at time of payment, computed at wage rates not less than those stated or referenced in the specifications, and any addenda thereto, on the actual date of bid or proposal opening, or in effect on the date of grant of permit for performance of such work under D.R.M.C. Section 49-171 *et seq.*, or on the date of the written purchase order for contracts let by informal procedure under D.R.M.C. Section 20-63(b), regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the Covered Workers. Increases in prevailing wages subsequent to the date of the contract for a period not to exceed one (1) year shall not be mandatory on either the Contractor or subcontractors. Future increases in living wages on contracts whose period of performance exceeds one (1) year shall be mandatory for the Contractor and subcontractors only on the yearly anniversary date of the contract. Decreases in prevailing wages subsequent to the date of the contract for a period not to exceed one (1) year shall not be permitted. Decreases in

prevailing wages on contracts whose period of performance exceed one (1) year shall not be effective except on the yearly anniversary date of the contract.

3. The Contractor and its subcontractors shall pay all Covered Workers at least once a week the full amounts of wages accrued at the time of payment, except that the contractor and subcontractor shall make such payments to non-construction workers such as janitorial or custodial workers at least twice per month.

4. The Contractor shall post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the Contractor and all subcontractors working under the Contractor.

5. If the Contractor or any subcontractor shall fail to pay such wages as are required by the contract, the Auditor shall not approve any warrant or demand for payment to the Contractor until the Contractor furnishes the Auditor evidence satisfactory to the Auditor that such wages so required by the contract have been paid.

6. The Contractor shall furnish to the Auditor each week during which work is in progress under the contract, a true and correct copy of the payroll records of all Covered Workers employed under the contract, either by the Contractor or subcontractors. Such payroll records shall include information showing the number of hours worked by each Covered Worker employed under the contract, the hourly pay of such Covered Worker, any deductions made from pay, and the net amount of pay received by each Covered Worker for the period covered by the payroll.

7. The copy of the payroll record shall be accompanied by a sworn statement of the Contractor that the copy is a true and correct copy of the payroll records of all Covered Workers working under the contract either for the Contractor or subcontractors, that payments were made to the Covered Workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all Covered Workers employed on work under the contract, either by the Contractor or by any subcontractor, have been paid the prevailing wages as set forth in the contract specifications.

8. If any Covered Worker employed by the Contractor or any subcontractor under the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the City may, by written notice to the Contractor, suspend or terminate the Contractor's right to proceed with the Work, or such part of the Work as to which there has been a failure to pay the required wages, and in the event of termination may prosecute the Work to completion by contract or otherwise, and the Contractor and any sureties shall be liable to the City for any excess costs occasioned the City thereby.

EXHIBIT A SCOPE OF WORK
EXHIBIT B CERTIFICATE OF INSURANCE
EXHIBIT C Prevailing Wage Schedule

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EXHIBIT A
SCOPE OF WORK



DENVER
6580 North Federal
Denver, CO 80221
P: (303) 429-3600
F: (303) 429-0113

LOS ANGELES, CA
2627 N. Ontario St.
Burbank, CA 91504
P: (818) 565-0033
F: (818) 565-0039
License #874739
B & C-7

PHOENIX, AZ
4714 E. McDowell Rd.
Phoenix, AZ 85005
P: (480) 505-4020
F: (480) 505-4029

2014 - 2018
WESTOVER CORPORATION SERVICE AGREEMENT
FOR
THE DENVER PUBLIC LIBRARY

Locations Covered Under This Agreement

The Andover Continuum Automation system, card access system and security CCTV (Closed Circuit Television) system at the Denver Central Public Library to include all recently performed access control/DDC (Direct Digital Control) projects. The Service Agreement also covers Andover BMS (Building Automation System) at Blair Caldwell, Ross Barnum, Cherry Creek, Schlessman, Bear Valley, Green Valley, Hadley, University Hills, Woodbury, Hampden, Montbello, Sam Gary and Virginia Village Branch Libraries. Any future Library additions shall be negotiated on a site by site basis.

SERVICES PROVIDED

Database Backups

The Andover Continuum database for card access/building automation systems will be backed up quarterly and stored at Westover's Denver office.

Technical Support by Telephone

Includes (4) hours a month of telephone technical support during business hours 8am - 5pm Mountain Time. This does not include programming changes or after hours support. All telephone support provided during non-business hours will be billed at the discounted rate of time and a half based on \$75/hr.

Hardware Repair Services

There is no charge for the parts to replace any failed field peripheral that is part of the covered systems. Andover Controls controllers, Integral CCTV head end equipment, and Cameras at the Central Library are not covered under this agreement. The labor required to replace any failed field peripheral is included in this agreement as stipulated in the on site maintenance section. Any other additional labor will be billed at the discounted rate of \$75/hr. during regular business hours, all other at time and a half, based on \$75/hr, with no additional charge for mileage or travel time. A copy of all service invoices will be left on site. All emergency calls will be responded to within (24) hours of the call being received by our office. A purchase order is required prior to any work being performed that is not covered under this agreement.

Software Revisions

Any software revision to existing points and controllers as of the start date of this agreement will be programmed by a Westover software specialist at the reduced rate of \$75/hr. during regular business hours, all other at time and a half based on \$75/hr with no additional charge for mileage or travel time. This rate also applies to programming changes performed via modem. Included in the agreement is providing and installing upgrades to the Continuum software and associated firmware, as released by Andover and supplied to Westover. The upgrade provision includes Andover revision upgrades only and does not include third party software. Siemens/Powers front-end upgrades are not included in the coverage.

Training / On Site Maintenance

Included is (32) hours of on site training per year to be scheduled with D.P.L. personnel. Additional training is available on site for \$350 per 4-hour block of instruction. Training includes all printed materials. The customer for on site training will supply training aids such as overheads and computers.

The on site maintenance time includes:

- A) (500) hours of service/programming time per year on all covered building automation systems.
- B) (250) hours of service/programming time per year on the security closed circuit television and card access systems at the Denver Central Library.
- C) The backup power batteries on all Andover master controllers, ACX access controllers and field level controllers will be replaced as required.
- D) The annual testing of the Denver Central Library building smoke management system.

The information contained herein in its entirety is a confidential, proprietary trade secret as defined in Colorado revised statutes 7-74-102(4), and is intended for the use of the designated recipient only. Any misappropriation of the information contained herein as defined by Colorado Revised Statutes 7-74-102(2) shall subject any person responsible for said misappropriation to liability as is specifically set forth in Colorado Revised Statutes 7-74-101 through 7-74-110. This information may not be distributed to any third party. Pricing is valid for a period of thirty days and will automatically expire after thirty days if not accepted. Copyright 2004. Westover Corporation

All use of on site time is to be scheduled with D.P.L. personnel. All time used outside of regular business hours will be deducted at (1 ½) hours per (1) hour of service, to compensate for overtime service rate and additional hours above the included (750) will be billed as stipulated in hardware repair services section. A service invoice will be filled out and left on site for all use of the included (750) hours of on site time.

GENERAL TERMS AND CONDITIONS

1. Exclusions

- A. All damage by acts of God i.e. lightning strikes or lightning storms, earthquakes, tornadoes, windstorms, flooding, or like natural disasters are excluded from this service agreement.
- B. Any equipment problems preexisting to the contract or those caused by abuse or improper maintenance / operation.
- C. Any equipment not included in the scope of the agreement.
- D. Vandalism or Theft.

2. Payment

- A. Payment for service contract is due in monthly payments. Westover will invoice within ten days (10) after the start of the contract, and monthly there after. If payment is not received within thirty days (30) from the invoice date, the contract will become void and the customer will be liable for the cost of all services rendered to date at our standard rates.
- B. Terms for any service not free under this service contract are net 30 days. A monthly interest penalty of 1% of the amount due will be added to any past due balance on a monthly basis.

3. Terms

- A. All contracts are for a **one-year period (365 days)** from start date.
- B. Not valid unless signed by Westover President, Larry Brand, and sealed with corporate seal.
- C. As used in this contract regular business hours shall be between the hours of 8am and 5pm Mountain standard time.
- D. All billable labor is in quarter hour increments, with (1) quarter hour being the minimum.
- E. General terms and conditions described herein are applicable to any and all service agreements.
- F. By the customer authorized representatives signature below the customer is agreeing to the coverage for the stated location/s being provided at the stated price. Further the customer is agreeing to the general terms and conditions described herein.

Start Date: 1/1/2014

End Date: 12/31/2018

Total Price 2014: <u>\$ 98,826.00</u>	(BAS Price: <u>\$53,839.00</u>	Card Access Price: <u>\$44,987.00</u>)
Total Price 2015: <u>\$ 101,790.00</u>	(BAS Price: <u>\$55,454.00</u>	Card Access Price: <u>\$46,336.00</u>)
Total Price 2016: <u>\$ TBD</u>	(BAS Price: <u>\$ TBD</u>	Card Access Price: <u>\$ TBD</u>)
Total Price 2017: <u>\$ TBD</u>	(BAS Price: <u>\$ TBD</u>	Card Access Price: <u>\$ TBD</u>)
Total Price 2018: <u>\$ TBD</u>	(BAS Price: <u>\$ TBD</u>	Card Access Price: <u>\$ TBD</u>)

The above pricing is at 3% increase per year for services provided to the libraries listed for years 1 and 2. Future added services will be negotiated as libraries come online. The increase for years 3, 4, and 5 will be between 0.5-3% negotiated on an annual basis.

Customer Name: Denver Public Libraries
 Customer Address: 10 West Fourteenth Street
Denver, Colorado 80204

Customer Signature

 Larry Brand, President
 WESTOVER CORPORATION

Corporate Seal



CERTIFICATE OF LIABILITY INSURANCE

WESTO-1

OP ID: WS

DATE (MM/DD/YYYY)

06/28/13

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).

PRODUCER CRS Insurance Brokerage Commercial Risk Solutions DBA 6600 E. Hampden Ave. Denver, CO 80224 David A. Benshoof		Phone: 303-996-7801 Fax: 303-757-7719	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: FAX (A/C, No):
INSURED Westover Corporation Westover Controls Corporation 6580 Federal Blvd. Denver, CO 80221-2204		INSURER(S) AFFORDING COVERAGE INSURER A: Continental Casualty Co. INSURER B: Continental Insurance Co. INSURER C: American Casualty Company INSURER D: Pinnacol Assurance INSURER E: INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **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	ADDITIONAL INSURER	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X		C1098365731	06/30/13	06/30/14	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			C1098365745	06/30/13	06/30/14	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			C1098386658	06/30/13	06/30/14	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	4030888	07/01/13	07/01/14	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Lease/Rented Equip			C1098365731	06/30/13	06/30/14	Limit 50,000 Ded 2,500

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

City & County of Denver and Denver Public Library are included as additional insured on the General Liability with respect to ongoing operations of the named insured for the certificate holder as required by written contract. All policy terms, conditions, and exclusions apply.

CERTIFICATE HOLDER

CITYDEN

City & County of Denver
 Denver Public Library
 10 W. 14th Avenue Parkway
 Denver, CO 80204

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

David A. Benshoof

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DENVER
THE MILE HIGH CITY

Office of Human Resources
Denver's Human Resource Agency

201 W. Colfax, Department 412
Denver, CO 80202
p: 720.913.5751
f: 720.913.5720
www.denvergov.org/csa

TO: All Users of the City of Denver Prevailing Wage Schedules
FROM: Seth Duhon-Thornton, Staff Human Resources Professional
DATE: Friday May 10, 2013
SUBJECT: Latest Change to Prevailing Wage Schedules

Please be advised, prevailing wage rates for some building, heavy, and highway construction trades have not been updated by the United States Department of Labor (DOL) since March 1, 2002. The Career Service Board, in their meeting held on April 21, 2011, approved the use of the attached supplemental wage rates until prevailing wage rates for these classifications of work are again published by the United States Department of Labor in accordance with the Davis-Bacon Act. The rates will be provided as a supplemental to the Davis-Bacon Building rates issued by OHR.

The attached Prevailing Wage Schedule is effective as of **Friday May 10, 2013** and applies to the City and County of Denver for **BUILDING CONSTRUCTION PROJECTS** (does not include residential construction consisting of single family homes and apartments up to and including 4 stories) in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO130004
Superseded General Decision No. CO20120004
Modification No.06
Publication Date: 05/03/2013
(5 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to, and individually registered in, a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program, which has received prior approval, by the DOL. Any employer, who employs an apprentice and is found to be in violation of this provision, shall be required to pay said apprentice the full journeyman scale.

For questions call (720) 913-5018

Attachments as listed above.

General Decision Number: CO130004 05/03/2013 CO4

Superseded General Decision Number: CO20120004

State: Colorado

Construction Type: Building

County: Denver County in Colorado.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	01/04/2013
1	01/11/2013
2	02/15/2013
3	03/08/2013
4	04/05/2013
5	04/26/2013
6	05/03/2013

ASBE0028-001 10/01/2012

	Rates	Fringes
Asbestos Workers/Insulator (Includes application of all insulating materials, protective coverings, coatings and finishings to all types of mechanical systems).....	\$ 28.98	13.03

BRCO0007-001 01/01/2011

	Rates	Fringes
BRICKLAYER.....	\$ 22.13	9.89

BRCO0007-005 06/01/2011

	Rates	Fringes
TILE SETTER.....	\$ 25.15	9.18

CARP0001-004 05/01/2009

	Rates	Fringes
Carpenters: Acoustical, Drywall Hanging/Framing and Metal Stud, Form Building/Setting.\$	26.60	8.89

CARP1607-002 06/01/2012

	Rates	Fringes
MILLWRIGHT.....	\$ 28.95	11.10

ELEC0068-002 12/01/2012

	Rates	Fringes
ELECTRICIAN (Includes Low Voltage Wiring and Installation of Fire alarms, Security Systems, Telephones, Computers and Temperature Controls).....	\$ 32.10	12.53

ELEV0025-002 01/01/2013

	Rates	Fringes
Elevator Constructor.....	\$ 39.59	25.185

FOOTNOTE:

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit.

PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day.

ENGI0009-003 06/25/2012

	Rates	Fringes
Power equipment operator - crane		
141 tons and over.....	\$ 25.48	8.62
50 tons and under.....	\$ 24.42	8.62
51 to 90 tons.....	\$ 24.57	8.62
91 to 140 tons.....	\$ 24.72	8.62

IRON0024-001 07/01/2011

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 23.80	10.91

LABO0720-003 05/01/2009

	Rates	Fringes
Laborers: Concrete/Mason Tenders.....	\$ 16.52	6.84

PAIN0079-002 08/01/2012

	Rates	Fringes
Drywall Finisher/Taper		
Hand.....	\$ 18.69	6.37
Tool.....	\$ 19.04	6.37
Painters:.....	\$ 17.99	6.37
PAPERHANGER.....	\$ 18.69	6.37

PAIN0930-001 07/01/2012

	Rates	Fringes
GLAZIER.....	\$ 27.77	7.42

PLAS0577-001 08/01/2011

	Rates	Fringes
Cement Mason/Concrete Finisher...	\$ 23.00	10.75

* PLUM0003-001 01/01/2013

	Rates	Fringes
PLUMBER		
(Excluding HVAC work).....	\$ 30.68	11.44

PLUM0208-001 01/01/2013

	Rates	Fringes
PIPEFITTER		
(Including HVAC pipe).....	\$ 33.10	11.52

SFCO0669-001 01/01/2013

	Rates	Fringes
SPRINKLER FITTER.....	\$ 32.44	18.60

SHEE0009-001 07/01/2012

	Rates	Fringes
Sheet metal worker		
(Includes HVAC duct and installation of HVAC systems).....	\$ 31.77	12.32

SUCO2001-011 12/20/2001

	Rates	Fringes
Carpenters:		
All Other Work.....	\$ 16.12	2.84

Ironworkers:		
Reinforcing.....	\$ 18.49	3.87
Laborers:		
Brick Finisher/Tender.....	\$ 12.78	1.41
Common.....	\$ 10.62	2.09
Power equipment operators:		
Mechanic.....	\$ 18.48	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Supplemental to the Davis-Bacon *Building* Construction Project rates
(Specific to the Denver projects)
Supp #100, Date: 03-02-2012

<u>Classification</u>		<u>Base</u>	<u>Fringe</u>
Boilermakers		\$30.97	\$21.45
Power Equipment Operators (Concrete Mixers):			
	Less than 1 yd	\$23.67	\$10.67
	1 yd and over	\$23.82	\$10.68
	Drillers	\$23.97	\$10.70
	Loaders over 6 cu yd	\$23.82	\$10.68
	Oilers	\$22.97	\$10.70
Soft Floor Layers		\$16.70	\$9.81
Ironworkers (Ornamental)		\$24.80	\$10.03
Plasters		\$24.60	\$12.11
Plaster Tenders		\$10.79	-
Laborers: Concrete Saw		\$13.89	-
Power Equipment Operators:			
	Backhoe	\$23.67	\$10.67
	Loader up to and incl 6 cu yd	\$23.67	\$10.67
	Motor Grader	\$23.97	\$10.70
	Roller	\$23.67	\$10.67
Truck Drivers (Dump Trucks):			
	6 to 14 cu yds	\$19.14	\$10.07
	15 to 29 cu yds	\$19.48	\$10.11
	Flatbed	\$19.14	\$10.07
	Semi	\$19.48	\$10.11

- To determine the Tile Setters-Marble Mason-Terrazzo mechanic rates—Use Davis Bacon-Building rates adopted by the Career Service Board.
- To determine the Tile Finisher-Floor Grinder-Base Grinder—Use current Career Service Prevailing Wage Schedules.
- Caulkers—Receive rate prescribed for craft performing operation to which caulking is incidental .i.e. glazier, painter, brick layer, cement mason.
- Use the “Carpenters—All Other Work” rates published by the federal Davis Bacon rates for batt insulation, pre-stress concrete and tilt up concrete walls, Roofers (including foundation waterproofing).
- Use the “Laborer—Common”, rates published by the federal Davis Bacon rates for General Housekeeping, Final Cleanup and Fence Installer.

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: BOOKS-201312115-00

Contractor Name: WESTOVER CORP

By: *Mark Karnuth*

Name: MARK KARNUTH
(please print)

Title: V.P. of Operations
(please print)

ATTEST: [if required]

By: *Cheryl Anderson*

Name: CHERYL ANDERSON
(please print)

Title: Contractor
(please print)

