

**ON CALL
TECHNOLOGY SERVICES
AGREEMENT**

THIS AGREEMENT (“Agreement”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **ZIA CONSULTING, INC.**, Colorado corporation, whose address is 4141 Arapahoe Ave Ste 207, Boulder, CO 80303, (the “Consultant”). Each party may be individually referred to as a “Party” or collectively as the “Parties.”

WHEREAS, the City desires to contract with an information technology consultant; and

WHEREAS, the Consultant is qualified and ready, willing and able to perform the services as set forth in this Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. SCOPE OF SERVICES; ORDER: The Consultant, under the general direction of, and in coordination with City’s Chief Information Officer, or other designated supervisory personnel (the “Manager”), shall diligently perform any and all authorized services required under this Agreement. The Consultant will provide specialized professional services to support the provisioning of technology services to the City and its constituents. These specialized services may include activities such as, but not limited to, technology program and project management, programming, systems and business analysis, systems and server administration, database administration, desktop support, network administration, infrastructure support, software license administration, specialized technology support, quality assurance, technical architect, and business/administrative support for technology activity. The specific job classifications and services to be provided by the Consultant and its rates are identified on attached **Exhibit A**. The City shall authorize specific assignments for the Consultant by placing a written service order signed by the Manager and the Consultant (the “Order”) describing in sufficient details the services and/or deliverables and rates to be provided. The Consultant agrees that during the term of this Agreement it shall fully coordinate its provision of the services with any person or firm under contract with the City doing work or providing services which affect the Consultant’s services. The Consultant shall faithfully perform the work in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in this Agreement. Consultant represents and warrants that all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards; all services will conform to applicable specifications and as attached to the Order, if any; and, it has the requisite ownership, rights and licenses to perform

its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights granted hereunder with respect to any software and services free and clear from any and all liens, adverse claims, and encumbrances of any third party.

2. **TERM:** The term of this Agreement shall commence on November 1, 2011, and, unless terminated earlier in accordance with this Agreement, shall terminate on the earlier to occur of (i) October 31, 2013 and (ii) the date on which the City contracts for services and expenses hereunder in excess of the Maximum Contract Amount. Provided that the Maximum Contract Amount has not been exceeded, the term of this Agreement may be extended for two periods of one (1) year each, on the same terms and conditions, including pricing, by a duly executed written amendment to this Agreement. However, no extension of the Term shall increase the Maximum Contract Amount stated herein; such amount may be changed only by a duly executed written amendment to this Agreement.

3. **COMPENSATION AND PAYMENT:**

A. **Fee:** The City agrees to pay to the Consultant, and the Consultant agrees to accept as its sole compensation for its services rendered and costs incurred under this Agreement, the rates set forth on attached **Exhibit A**.

B. **Reimbursement Expenses:** There are no reimbursable expenses allowed under this Agreement. All expenses and materials of the Consultant are contained in the rate contained in Section 3(A) of this Agreement.

C. **Invoicing:** Consultant shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City. The City shall pay any undisputed amounts in accordance with its obligations under the City's Prompt Payment Ordinance.

D. **Maximum Contract Liability:**

(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable to pay for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of **FOUR MILLION DOLLARS (\$4,000,000.00)** (the "Maximum Contract Amount"). The Consultant acknowledges that the City is not obligated to execute an agreement or an amendment to Consultant for any further services and that any services performed by Consultant beyond that specifically described in **Exhibit A** or contained in an Order are performed at Consultant's risk and without authorization under this Agreement.

(ii) The Parties agree that the City's payment obligation, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The Parties agree that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(iii) **LIMITATION ON LIABILITY.**

CONSULTANT (INCLUDING ANYONE FOR WHOM CONSULTANT IS LEGALLY LIABLE) SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT CITY SUFFERS OR CLAIMS TO HAVE SUFFERED (INCLUDING WITHOUT LIMITATION ANY LOSS OR DAMAGE TO CITY DATA OR THE DATA OF ANY THIRD PARTY INCLUDING ANY PROPRIETARY DATA OR CONFIDENTIAL INFORMATION) UNLESS SUCH LOSS OR DAMAGE IS CAUSED BY CONSULTANT'S NEGLIGENCE. THE PARTIES AGREE THAT CONSULTANT ASSUMES NO LIABILITY WHATSOEVER FOR DATA THAT IS MODIFIED OR DELETED BY CITY OR ANY AGENT OF CITY. IN NO EVENT SHALL CONSULTANT'S LIABILITY TO CITY OR ANY THIRD PARTY BASED ON ANY CLAIM OR CAUSE OF ACTION IN ANY WAY ARISING OUT OF THIS AGREEMENT OR ANY WORK PERFORMED UNDER THIS AGREEMENT, IN THE AGGREGATE, EXCEED AN AMOUNT EQUAL TO THE TOTAL CONTRACT AMOUNT UNDER THIS AGREEMENT. IN NO EVENT SHALL CONSULTANT'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED \$4,000,000, INCLUDING ANY LIABILITY UNDER SECTION 13. IN NO EVENT SHALL CONSULTANT BE LIABLE TO CITY OR ANY THIRD PARTY ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

4. STATUS OF CONSULTANT: The Parties agree that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1E(x) of the Charter of the City. It is not intended, nor shall it be construed, that the Consultant or its employees are

employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

5. TERMINATION:

A. The City has the right to terminate this Agreement, with or without cause, on ten (10) days written notice to the Consultant. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the City or the City informs the Consultant that it no longer requires its services, and the Consultant shall bear all the risk of providing same.

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

C. Either Party may terminate this Agreement by written notice to the other in the event that the other Party breaches this Agreement and fails to cure such breach to the non-breaching Party's satisfaction within thirty (30) days of written notice specifying the breach.

D. If this Agreement is terminated by the Consultant or by the City for cause, the Consultant shall be compensated for, and such compensation shall be limited to: (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City; (2) the reasonable value to the City of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment; and (3) the cost of any work that is needed to accomplish an orderly termination of the work and is approved in writing by the Manager. If this Agreement is terminated without cause by the City the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services prior to the date of the termination. In the event that all or any part of this Agreement is terminated for any reason, Consultant will immediately document in detail the status of any services in progress. Consultant will provide all assistance reasonably requested by the City in connection with the efficient and orderly transition of performance of the services by Consultant to the City or any third party designated by the City.

E. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City that the Consultant is using by whatever method the City deems expedient. The

Consultant shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents, which have been paid for by the City; and these documents and materials shall be the property of the City. Copies of work product incomplete at the time of termination shall be marked “DRAFT-INCOMPLETE.”

F. Upon termination of this Agreement by the City, the Consultant shall not have any claim against the City by reason of such termination or by reason of any act incidental to termination, except for compensation for work satisfactorily performed as described herein and except for compensation as set forth under Section 5D.

6. INTELLECTUAL PROPERTY RIGHTS: With respect to all Software (as defined below) and Documentation (as defined below) delivered under each Order, upon payment of all amounts due to Consultant for such Software and Documentation, as applicable, Consultant hereby grants to City a limited, non-exclusive, perpetual license to use and modify such Software only for the City’s internal business needs, and to use the Documentation to support the use of the Software. For the purposes hereof, the “Software” shall be the source code form of any software developed under any Order, any Consultant software underlying any software developed under any Order, and any Consultant software products licensed hereunder as set forth on any Order. For the purposes hereof, the “Documentation” shall mean all documents that have been delivered under any Order, including without limitation any manuals, reports or handbooks. For the sake of clarification, the license granted hereunder shall not include any right to reproduce, resell, license, sublicense, publicly perform, publicly display, distribute, assign or otherwise transfer the Software or Documentation, or otherwise exploit or make the Software or Documentation available to any third party, and Consultant shall retain the ownership of all right, title and interest in and to the Software and Documentation and all other rights in and to the Software and Documentation, including but not limited to all intellectual property rights, and including all modifications and derivations thereto (collectively, the “Intellectual Property”) and City shall have no other rights in and to the Intellectual Property other than as expressly set forth herein. Notwithstanding the foregoing, City specifically agrees not to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Software or any portion thereof; (ii) modify, port, translate, localize or create derivative works of the Software other than as expressly allowed hereunder; (iii) use the Software to knowingly (a) infringe on the intellectual property rights of any third-party or any rights of publicity or privacy; (b) violate any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); (c) vault defamatory, trade libelous, unlawfully threatening, or unlawfully harassing data; (d) vault obscene, pornographic or indecent data in violation of applicable law; or (e) propagate any virus, worms, Trojan horses or

other programming routine intended to damage any system or data; (iv) use the Software in any application that may involve risks of death, bodily injury, property damage or environmental damage, or in any life support applications, devices or systems; (v) use the Software in violation of any applicable laws, wherever such use occurs; (vi) use the number per type of licenses in excess of that specified in the applicable Order; (vii) gain or attempt to gain unpermitted access by any means to any Consultant computer system, network, or database, and/or (viii) file copyright or patent applications that include the Software and/or Documentation or any portion thereof. Customer agrees to inform Consultant promptly of any infringement or other improper action with respect to the Intellectual Property that comes to City's attention. City recognizes and acknowledges the exclusive right of Consultant in and to all patents, trademarks, service marks, trade names, copyrights, and other intellectual property and proprietary rights in and to the Intellectual Property and that such Intellectual Property is the sole and exclusive property of Consultant. City waives its right to contest the validity and/or ownership of such Intellectual Property.

7. CITY INFORMATION:

A. The Consultant acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Consultant may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Consultant agrees that all Proprietary Data or confidential information provided or otherwise disclosed by the City to the Consultant shall 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 Proprietary Data and information as a reasonably prudent consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

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

C. The Consultant acknowledges and understands that the Proprietary Data may not be completely free of errors. The Proprietary Data should be used for reference only and should not be relied upon in any other way, and the Consultant is hereby advised to independently verify all work performed in reliance upon the Proprietary Data.

D. The Consultant agrees that any ideas, concepts, know-how, computer programs, data processing techniques, Proprietary Data and confidential information provided by the City in connection with this Agreement shall be deemed to be the sole property of the City and all rights, including copyright, shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The Consultant agrees, with respect to the Proprietary Data and the City's confidential information that: (1) the Consultant shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (2) the Consultant shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (3) the Consultant shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

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

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

8. Consultant's Information: The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, 7B C.R.S. (2003), 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.

9. EXAMINATION OF RECORDS: The Consultant agrees that any duly authorized representative of the City, including the City Auditor, shall have access to and the right to examine any books, documents, papers and records of the Consultant, involving transactions related to this Agreement. This right shall survive for a minimum of three (3) years after final payment is made under this Agreement.

10. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any action by a Party constitute or be construed to be a waiver by that party of any breach of covenant or default which may then exist on the part of the other Party. A Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

11. PERSONNEL:

A. All key personnel identified in an Order will be dedicated by Consultant to the City to the extent necessary to meet Consultant's obligations under each Order. The Consultant shall submit to the Manager a list of any additional personnel who will perform services under an Order, together with complete resumes and other information describing their ability to perform the services. Such additional personnel must be approved in writing by the Manager.

B. The Parties intend that all key personnel be engaged to perform their specialty for all services required by an Order. If the Consultant must replace any of its key personnel, it shall notify the Manager in writing of the changes. No such replacement shall be made until the replacement is approved by the Manager, which approval shall not be unreasonably withheld.

The Manager shall respond to the Consultant's written notice of replacement within fifteen (15) days of receipt. If the Manager does not respond within that time, the listed replacement personnel shall be deemed approved. If during the term of the Agreement, the Manager determines that the performance of approved key personnel is not acceptable, he shall in his sole and absolute discretion either (a) give the Consultant a reasonable period of time to correct the performance or (b) require the Consultant to replace the personnel as soon as practicable.

C. While the Consultant may retain and contract with subcontractors, no final agreement with any subcontractor shall be entered into without the written consent of the Manager. Requests for approval of subcontractors must be made in writing and include a description of the nature and extent of services to be provided by the subcontractor; the name, address and experience and qualifications of the subcontractor; and any other information which may be requested by the Manager. Because the Consultant's represented qualifications are a consideration to the City in entering into this Agreement, the Manager shall have the right to reject any proposed subcontractor deemed unqualified or unsuitable for any reason to perform the proposed services, and the Manager shall have the right to limit the number of subcontractors. The Manager shall respond to the Consultant's written notice regarding a subcontractor within thirty (30) days of receipt. If the Manager does not respond within that time, the subcontractor shall be deemed approved. Approval of the subcontractor shall not relieve the Consultant of any obligations under this Agreement. Any final agreement with the approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make a claim of payment against any City property arising out of the performance of this Agreement.

D. The Consultant is prohibited from hiring any subcontractor that is currently debarred by the City in accordance with D.R.M.C. § 20-77.

12. 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. Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested.

If any policy is in excess of a deductible or self-insured retention, the City must be notified by the 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 coverage. Consultant 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 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 and Auto Liability, Consultant 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, Consultant's insurer shall waive subrogation rights against the City.

E. Subcontractors and Subconsultants: Each subcontractor and subconsultant (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall procure and maintain a Commercial General Liability insurance policy with such limit as is commercially reasonable. 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. Technology Errors & Omissions including Cyber Liability: Consultant shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

J. Additional Provisions:

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

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds or cross liability provision; and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

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

(c) 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.

13. DEFENSE AND INDEMNIFICATION:

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

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

C. Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

F. Consultant will, at Consultant’s expense, indemnify, defend and hold harmless the City, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney’s fees and awarded damages) arising out of a claim that the products or services supplied or provided by the Consultant, or their use by the City, infringe, violate or misappropriate a patent, copyright, trademark, trade secret or other intellectual

property or proprietary right of any third party. The City will promptly notify Consultant in writing of any claim and cooperate with Consultant and its legal counsel in the defense thereof. Consultant shall, in its discretion, perform some or all of the following actions to ensure that the City is not negatively impacted in the functionality of its technology services because of an infringing product: (i) contest, (ii) settle, (iii) procure for the City the right to continue using the product, or (iv) modify or replace the infringing product so that it no longer infringes (as long as the functionality and performance are not degraded as reasonably determined by the City). The City may participate in the defense of such action at its own expense.

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

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

16. ASSIGNMENT AND SUBCONTRACTING:

A. The Consultant agrees that it will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the Manager which shall not be unreasonably withheld or delayed. A transfer will include a merger, consolidation, liquidation or change of ownership by which fifty percent (50%) or more of the outstanding voting stock, equity or control is transferred. Any attempt by the Consultant to assign or transfer its rights or obligations without the prior written consent of the Manager shall, at the option of the Manager, be null and void and terminate this Agreement and all rights of the Consultant. Consent to the assignment may be granted or denied at the sole and absolute reasonable discretion of the Manager. If the City consents to an assignment, then any assignment will not become effective until the assignee unequivocally in a signed document satisfactory to the Manager (1) assumes the obligations under this Agreement; and (2) agrees to be bound by all of the terms, covenants and conditions of this Agreement. Any consent of the City pursuant to this provision must be executed with the same formality as this Agreement. The rights and obligations of the Parties under this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns permitted under this Agreement.

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

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

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

19. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS: This Agreement is the complete integration of all understandings between the Parties with respect to the work to be done hereunder. No prior or contemporaneous addition, deletion, or other modification related to the subject matter herein shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement shall have any force or effect nor bind the City. This Agreement and any amendments to and Orders placed under it shall be binding upon the Parties and their successors and assigns.

20. SEVERABILITY: The Parties agree that if any provision of this Agreement or any portion thereof, except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of the Parties can be fulfilled.

21. CONFLICT OF INTEREST:

A. The Parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement; and the Consultant further agrees not to hire or contract for services

any employee or officer of the City which would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. 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.

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

City : Chief Information Officer
201 West Colfax Avenue, 3rd Floor
Denver, Colorado 80202

Consultant: ZIA CONSULTING, INC.
4141 Arapahoe Ave., Ste 207
Boulder, CO 80303
Attn: Michael Mahon, President

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

23. 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.

24. GOVERNING LAW; VENUE: This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, including any amendments. The Charter and Revised

Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

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

26. **WARRANTY:** 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.

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

28. **ORDER OF PRECEDENCE:** In the event of any conflicts between the language of this Agreement and the exhibits, the language of the Agreement shall control. |

29. **SURVIVAL OF CERTAIN PROVISIONS:** The Parties agree that all terms and conditions of this Agreement, together with any exhibits and attachments, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement, by expiration of the term or otherwise, shall survive termination and shall continue to be enforceable. Without limiting the generality of this provision, the Consultant's obligations to provide insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

30. **COMPLIANCE WITH ALL LAWS:** All of the services performed under this Agreement by the Consultant shall comply with all

applicable laws, rules, regulations and codes of the United States and State of Colorado and with the charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver, as amended.

31. 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.

32. TIME IS OF THE ESSENCE: The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement and any Order, time is of the essence.

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

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

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

36. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Consultant 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 contract personnel being barred from City facilities and from participating in City operations.

37. NON-SOLICITATION: Both Parties agree that for the term of this Agreement and for a period of one year after the termination that neither party will solicit, recruit or hire any employee or subcontractor of the other party, the identity of which was learned or discovered in the performance of the services under this agreement or any applicable Order, except where the Parties have otherwise agreed in writing.

38. BACKGROUND CHECKS ON CONSULTANT'S EMPLOYEES. The Consultant is responsible for completing background checks on any employee who will be engaged with the City under this Agreement in accordance with the City's Executive Order 135. The Consultant shall have performed Criminal Background checks, Financial/ Credit Checks, and Educational Background checks for all employees who will be engaged with the City under this Agreement no more than six months prior to being engaged on City work. The Consultant shall certify that there are no misdemeanor or felony convictions for any employee working within the various departments of the City. The Consultant shall affirm that it has performed the background check as determined by the Order and submit its affirmation on a form supplied by the City. If the Consultant falsely represents the contents of any affirmation or background check it shall be grounds for immediate termination of this Agreement.

39. EXPORT RESTRICTIONS. City agrees and certifies that software, products, services, and/or all related technical information and materials that City receives from Consultant will not be exported or re-exported outside of the United States ("U.S.") except as authorized and permitted by the laws and regulations of the U.S. and as expressly permitted under the Agreement, and export or re-export contrary to U.S. laws is prohibited. City agrees to comply, at its own expense, with any and all foreign governmental requirements relating to City's exports from the U.S., importation and use outside of the U.S., and/or re-exports from abroad of such products, services, and/or all technical information and materials. City also agrees that Consultant may withhold provision of software, products, services, and/or technical information and materials under this Agreement if Consultant believes, in good faith, that City has breached this provision.

40. GOVERNMENT END-USER NOTICE. To the extent that any Software licensed hereunder is a "Commercial Item" as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable, consistent with 48 C.F.R. §§ 12.212, 227.7202-1 through 227.7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to any U.S. Government end-users (i) only as Commercial Items and (ii) with only those rights as are generally granted to other end-users.

41. **ITAR.** City understands that employees of Consultant may have access to native data to perform its duties under this Agreement and represents that none of this data requires protection from access by foreign persons because it contains technical information regarding defense articles or defense services within the meaning of the International Traffic in Arms Regulations (22 CFR 120) or technical data within the meaning of the Export Administration Regulations (15 CFR 730-774). If any of this data does contain any such information, City will notify Consultant of the specific data that contains such information and acknowledges that special storage and service rates will apply thereto.

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EXHIBIT A



PRICING ITEM #5 Enterprise Document Management

Technical Environment:

- Alfresco Enterprise Content Management System for Document Management, Records Management, and Collaboration
- KOFAX Enterprise/KOFAX Capture (with various KOFAX extension products)
- Legacy, contained agency solutions that use Documentum and various other third party/custom document management systems

Typical Work:

Document management projects usually involve either (1) simple document repository services – the ability to create, update, version, and delete documents, (2) set up of collaboration spaces (e.g. “Sharepoint like” workspaces in Alfresco), or (3) projects that automate document workflows, support complex business logic, involves multiple batch/back-office scanning processes, and intricate use of system roles.

Professional Service	Cost Per Hour(includes all costs travel, hotel etc.
ENTERPRISE DOCUMENT MANAGEMENT	
1. Document Management Systems Analyst	
minimum	\$135.00
maximum	\$150.00
2. Document Management Developer	
minimum	\$115.00
maximum	\$130.00
3. Document Management Senior Developer	
minimum	\$130.00
maximum	\$145.00



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/23/2011

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 Taggart & Associates, Inc. 1600 Canyon Boulevard P. O. Box 147 Boulder CO 80306	CONTACT NAME: Melissa Whittier, CWCS PHONE (A/C No. Ext): (303)442-1484 FAX (A/C No.): (303)442-8822 E-MAIL ADDRESS: melissaw@taggartinsurance.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED Zia Consulting, Inc., Etendi.com 4141 Arapahoe Avenue, Suite 207 Boulder CO 80303	INSURER A: Travelers P&C Ins Co of Amer NAIC # 25674	
	INSURER B: Travelers Indemnity NAIC # 25658	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES **CERTIFICATE NUMBER:** CL1192310042 **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 INSR	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 checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			TT06305892	12/17/2010	12/17/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BA588M927110TEC	12/17/2010	12/17/2011	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$ 10,000			TT06305893	12/17/2010	12/17/2011	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Errors & Omissions Deductible: \$25,000			TT06305892	12/17/2010	12/17/2011	Each Wrongful Act \$1,000,000 Aggregate \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
City and County of Denver, its elected and appointed officials, employees and volunteers are named as Additional Insured as respects General Liability in regard to work performed by the Named Insured. Includes Waiver of Subrogation in regard to General Liability. General Liability is primary and non-contributory.

CERTIFICATE HOLDER

(720)913-8101

City and County of Denver
Municipal Office Building
201 West Colfax Avenue
Dept. 304
Denver, CO 80202

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

M Whittier, CWCS/LJK

Contract Control Number:

Vendor Name:

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 _____

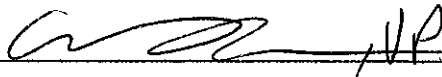
By _____

By _____



Contract Control Number: 201102801

Vendor Name: ZIA CONSULTING INC

By: 

Name: William P Myers
(please print)

Title: Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

