

ON-CALL TECHNICAL AND ENGINEERING

SERVICES AGREEMENT

between

THE CITY AND COUNTY OF DENVER

and

**THE REGENTS OF THE UNIVERSITY OF COLORADO, A BODY CORPORATE, ON
BEHALF OF THE UNIVERSITY OF COLORADO DENVER**

Contract No. 201842069

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**THIS AGREEMENT** is made and entered into between the **CITY AND COUNTY OF DENVER** (the "City"), a municipal corporation of the State of Colorado, and **THE REGENTS OF THE UNIVERSITY OF COLORADO**, a body corporate, for and on behalf of the University of Colorado Denver, a public institution of higher education created under the Constitution and the Law of the State of Colorado (the "University"), whose address is University of Colorado Denver, Grants & Contracts, MS F428, Anschutz Medical Campus, Bldg. 500, Rm. W1126, 13001 E. 17<sup>th</sup> Place, Box 6508, Aurora, Colorado 80045-0508.

**SECTION 1 – ENGAGEMENT**

**1.01 Line of Authority for Contract Administration.** The City's Executive Director of Public Works ("Executive Director" or "Manager") is the City's representative responsible for authorizing and approving services performed under this Agreement. The Executive Director hereby designates the City Engineer as the Executive Director's authorized representative for the purpose of designating a Contract Manager who will be responsible for confirming that task order requests are within the scope of this Agreement, confirming adequate contract capacity and other designated tasks. Project Managers will be designated on a task order basis. The Project Manager will be responsible for administering, coordinating and finally approving the work performed by the University under this Agreement except for approvals which are specifically identified in this Agreement as requiring the Executive Director's approval. The Executive Director expressly reserves the right to designate another authorized representative to perform on the Executive Director's behalf by written notice to the University.

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

**1.03 Scope of University's Authority.** The University shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. The University is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. The University lacks any authority to bind the City on any contractual matters.

Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

## **SECTION 2 – UNIVERSITY'S SERVICES**

**2.01 General.** The University shall provide technical and professional services as set forth in this Agreement, to be performed by Professor Kevin Rens and high school, undergraduate or graduate students under Professor Rens' supervision. City may assign projects on an as-needed basis, in accordance with the terms and conditions of this Agreement. The University's basic services shall include but not be limited to those services described in **Exhibit A**.

- (a) Assigned work will be set forth in task orders issued by the City's Project Manager which will, upon acceptance by the University, become incorporated into the terms of this Agreement.
- (b) Professor Rens shall interview and select the Students, provided that the City reserves the absolute right, in its sole discretion, to refuse to accept or to later demand the termination of any accepted Student hereunder. The number of Students to be furnished and the specific length of time each Student is to work under this Agreement shall be mutually agreed to by Professor Rens and the Project Manager. It shall be the responsibility of the Project Manager to document by letter to the University the start date of work for any Task Order. It shall be the responsibility of Professor Rens to document by letter to the City before work starts on any Task Order each Student assigned to the work. If students are no longer assigned to a Task Order or new Students are assigned Professor Rens will update the City in writing. Professor Rens and all Students shall serve under this Agreement solely at the pleasure of the City, and shall have no vested employment or performance rights whatsoever. As Professor Rens and the Students complete work under any task order under this Agreement or are terminated under this Agreement, the Project Manager shall provide the effective date of each such termination in writing to the University.
- (c) All services and deliverables provided under this Agreement shall be adequate and sufficient for the intended purposes of the undertaking.
- (d) The University shall prepare each document submittal required by any task order under this Agreement in a format that complies with all City requirements for the Project. No funds will be paid to the University for the preparation of documents in a form other than that considered usual and customary by the Department of Public Works. No document will be considered final until accepted by the City.

**2.02 Professional Services.** In no event shall the University allow Professor Rens or the Students to perform professional engineering services on or relating to any assigned project or task without the prior written approval of the Executive Director or the Executive Director's designee. In the event such professional services are requested by any City representative or otherwise required on any project or task, the University shall direct Professor Rens or the Students to immediately notify the Executive Director or the Executive Director's designee of

the request or requirement and will not perform such requested or required services until said time as the University receives the request in a written approval from the Executive Director or the Executive Director's designee.

**2.03 Program and Budget.**

- (a) The University agrees to review the City's program and budget for each project to which it is assigned, and further agrees, unless it has timely notified the City that an assigned project cannot be accomplished within such budget, to accomplish each project within the intent of the program and established budget. Should the University determine that an assigned project cannot be accomplished within the established budget, the University shall immediately notify the City, in writing, so that the project scope or project budget can be reviewed and modified if necessary.

**2.04 Coordination and Cooperation.**

- (a) The University agrees to perform under this Agreement in such a manner and at such times that the City or any contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.
- (b) All records, data, specifications, documentation and other work products prepared by the University, Professor Rens or the Students under this Agreement shall be the property of the City.
- (c) The University agrees to allow the City to review any of the procedures used by it, by Professor Rens, or by the Students in performing the services hereunder and to make available for inspection any and all notes, documents, materials and devices used in the preparation for or performance of any of the services required hereunder, in order to coordinate with the performance of services by the University in accordance with the terms of this Agreement.

**2.05 Basic Services – General.**

- (a) Subject to an express, agreed upon limitation of such duties set forth in any approved project proposal for the particular project assigned to the University under this Agreement, the University agrees to provide all of the services and duties set forth in this Agreement in regard to each project to which it is assigned and its proposal is approved.
- (b) When directed by the Executive Director to provide services under this Agreement on a particular project, the University shall prepare a project specific proposal in accordance with the provided scope or description of services for that project. A separate project specific proposal shall be prepared for each project for which the University's services are required and shall set forth, at a minimum, (1) the maximum compensation for the University's basic services; (2) the additional services budget, if any, for the assigned project; (3) the budget for reimbursable expenses if applicable; (4) a description of the project and requested scope of services (the "Services"); (5) an agreed upon schedule for the University's services; and (6) a maximum price for all of the University's Services.

Upon approval by the Executive Director of such project proposal, the approval and appropriation of funding for such project, and the issuance of a written Notice to Proceed, the University shall proceed to provide the required Services.

- (c) Such Services shall be provided in conformance with the approved project specific Proposal.
- (d) The University's basic services for each assigned project may consist of any one or combination of the phases described below and shall include, but not be limited to, traffic and transportation engineering services appropriate to each assigned project for each phase.
- (e) The University shall obtain written authorization from the City before proceeding with each phase of each assigned project.
- (f) Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any phase beyond the latest phase authorized in writing by City for each assigned project. Further, nothing in this Agreement shall be construed as guaranteeing the University any minimum amount of compensation under this Agreement.
- (g) In the event a project which is assigned to the University under this agreement is funded in whole or part by federal funds, each of the applicable terms set forth in any funding arrangement for such funds shall be, and by this reference is incorporated into the project specific proposal for such project, and is to be included in the University's basic service for such project.

**2.06 Basic Services - Phase Specific.** In the interest of tracking progress towards completion of all work items necessary to complete an assigned project, the required Basic Services tasks which must be performed on each Project may be separated into phases. As applicable for an assigned project, the University shall satisfactorily complete all work necessary to complete each phase as specifically set forth in an assigned Project.

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

The City shall compensate the University for its service performed and expenses incurred under this Agreement as follows.

**3.01 Fee for Basic Services.** The City agrees to pay the University, as compensation for any basic services rendered for an assigned Project, either stipulated sum (fixed fee), to be set forth in each approved project proposal prepared prior to commencement of any and all work under this Agreement, or hourly up to a specified limit based on the University's hourly billing rates, whichever is less. The hourly billing rates are set forth in **Exhibit A**, and include an amount paid by the University for benefits for each person and the University's "Facilities and Administrative" charges not exceeding twenty-six percent (26%) of the amounts paid to each such person. If the actual amounts paid to each person by the University shall increase during the term of this Agreement, the total hourly rates paid to the University for their services shall be increased accordingly, based on documentation of such increased rates from the University, and

subject to the Maximum Contract Amount. Amounts budgeted for tasks may be increased or decreased upon written approval of the Project Executive Director, and subject to the Maximum Contract Amount stated in Section 3.

**3.02 Reimbursable Expenses.** Except for those reimbursable expenses specifically identified in **Exhibit A** or approved in writing by the City as reasonably related to or necessary for the University's services, all other expenses shall be included in the University's fee and will not be reimbursed hereunder.

**3.03 Invoicing and Payment.** The City will make monthly progress payments for all services performed under this Agreement based upon the University's monthly invoices. Such invoices shall be in a form acceptable to the City. The University shall submit an invoice at the end of each month showing the expenses incurred and recorded in the University financial system for the services performed under this Agreement for the invoiced period. The invoice shall also include a schedule listing by name each Student who was paid for the invoice period, along with the specific days and hours worked by each Student and by Professor Rens. Due to the University's bi-weekly payroll cycle for students, salary charged in each month may include hours from a prior month. Therefore, the schedules will reflect the hours paid to the students each month and will include the timeframe for those hours. The invoices will not include the programmatic information. Programmatic information will be provided separately by Professor Rens. For ease of payment, the total amount due for each Student, for Professor Rens, and requested reimbursement for any vehicle or insurance payments made during the month should be added so that the grand total due to the University is clearly reflected on the invoice. All invoices shall be mailed to the Department of Public Works, Matt MacLachlan, Engineering Supervisor 201 West Colfax, Avenue, Dept. 506, Denver, Colorado 80202 and the Project Manager for the task order. A digital copy of each invoice shall also be sent to Professor Rens at kevin.rens@ucdenver.edu. The City will mail all payments due to the University to the University of Colorado Denver, Campus Box 119, P.O. Box 173364, Denver, Colorado 80217-3364. The University, as a non-profit higher learning institution, cannot accept interest on late invoices and forfeits prompt pay.

**3.04 Maximum Contract Amount.**

- (a) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation for all services provided under this Agreement shall not exceed **Three Million and No/100 Dollars (\$3,000,000.00)** (the "Maximum Contract Amount") for the full term of the Agreement. In no event shall the maximum payment to the University for all services provided throughout the entire term of this Agreement exceed the Maximum Contract Amount. Any services performed beyond those set forth in any approved assigned project are performed at University's risk and without authorization under the Agreement.
- (b) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the

Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

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

**4.01 Term.** The initial term of this Agreement shall commence **July 1, 2018** and shall end **July 1, 2021**; provided, however, that any work in progress that was initiated during the term of this Agreement shall continue and be paid for hereunder until the completion thereof. All terms and conditions of the Agreement shall remain in full force and effect until such completion. This initial term may be extended, at the sole option of the City, for up to two additional years by written amendment. In no event, however, shall the University's performance under this Agreement, including the possible two year extension, exceed a five (5) year period ending on month and day of the execution of this Agreement. In addition, nothing contained herein shall obligate the City to extend the Agreement beyond the initial term.

**4.02 Termination.** The City may terminate this Agreement at any time upon ten (10) days' notice if the University's, any Student's, or Professor Rens' services are not being satisfactorily performed in accordance with this Agreement or if the underlying project or activity is canceled. The City may otherwise terminate the Agreement without cause, for its convenience, upon thirty (30) days' notice to the University. In the event Professor Rens becomes unable or unwilling to continue participation in the Project, and a suitable replacement is not agreed upon between the City and University within sixty (60) calendar days, either party may terminate this Agreement upon written notice to the other. If the University's services are terminated, it shall be paid only for that portion of services satisfactorily completed, to include pro-rata costs and non-cancellable obligations, in accordance with this Agreement at the time of notice of such action.

#### **SECTION 5 – GENERAL PROVISIONS**

##### **5.01 City's Responsibilities.**

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

##### **5.02 City's GIS Proprietary Data.**

- (a) **General:** The University acknowledges and accepts that, in performance of its work under the terms of this Agreement, the University, the Students or Professor Rens may have access to Proprietary Data or confidential information which may be owned or controlled by the City and that the disclosure of such data or information may be damaging to the City or third parties. As such, the University agrees that all information provided

or otherwise disclosed by the City to the University, the Students or Professor Rens be held in confidence and used only in the performance of their obligations under this Agreement. The University shall direct Professor Rens and the Students to exercise the same standard of care to protect such information as the University would exercise to protect its own proprietary or confidential data. "Proprietary Data" shall mean geographic materials or Geographic Information Systems ("GIS") data relating to the City and County of Denver including but not limited to maps, computer programs, aerial photography, methodologies, software, diagnostics and documents; or any other materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the University, the Students or Professor Rens by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

- (b) Use of City GIS Proprietary Data or confidential information: The University agrees that it shall not and it shall direct Professor Rens and the Students not to use the Proprietary Data or confidential information for any purpose other than performing their obligations under this Agreement and, that by providing this Proprietary Data or confidential information, the City is not granting to the University, the Students or Professor Rens any right or license to use such data except as provided for herein. The University further agrees that it will not and that it will direct Professor Rens and the Students 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 City's GIS Administrator or the Executive Director. The University agrees that any ideas, concepts, know-how, computer programs, or data processing techniques developed by the University, the Students or Professor Rens or provided by the City in connection with this Agreement or the Proprietary Data or confidential information shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. However, the City may consent to the inclusion of the Proprietary Data or confidential information in published material upon prior written approval of the City's GIS Administrator or the Executive Director. The University agrees, and shall direct Professor Rens and the Students as to the same, that with respect to the Proprietary Data and confidential information, the University, Professor Rens and the Students: (1) shall not copy, recreate, reverse engineer or decompile such data, in whole or in part; unless authorized in writing by the City's GIS Data Administrator or the Executive Director; (2) shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (3) shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.
- (c) Disclaimer: Notwithstanding any other provision of this Agreement, **THE CITY IS FURNISHING PROPRIETARY DATA AND**

**CONFIDENTIAL INFORMATION ON AN “AS IS” BASIS, WITHOUT ANY SUPPORT WHATSOEVER, AND WITHOUT REPRESENTATION, WARRANTY OR GUARANTEE, INCLUDING BUT NOT IN ANY MANNER LIMITED TO, FITNESS, MERCHANTABILITY OR THE ACCURACY AND COMPLETENESS OF THE GIS DATA OR CONFIDENTIAL INFORMATION. THE UNIVERSITY IS HEREBY ADVISED TO VERIFY ITS WORK AND TO DIRECT PROFESSOR RENS AND THE STUDENTS AS TO THE SAME. 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 RESULT OF LOST REVENUES, LOSS OF USE OF DATA, THE COSTS OF RECOVERING SUCH PROGRAMS OR DATA, THE COST OF ANY SUBSTITUTE PROGRAM, CLAIMS BY THIRD PARTIES, OR FOR SIMILAR COSTS. IF DISCREPANCIES ARE FOUND, THE UNIVERSITY AGREES TO CONTACT THE CITY IMMEDIATELY AND SHALL DIRECT PROFESSOR RENS AND THE STUDENTS AS TO THE SAME.**

**5.03 Proprietary and Confidential Information – Generally.**

- (a) This Section 5.03 applies to all information not constituting Proprietary Data as defined in Section 5.02. The University will maintain the levels of confidentiality required as directed by the City unless required otherwise by law or legal process.
- (b) Unless otherwise expressly agreed to in writing to the contrary, ‘Proprietary Information’ is defined as information of any nature in any form including drawings, specifications, data, charts, etc., which has been reduced to written form and relates to the purpose of the agreement. It shall be clearly identified as ‘Proprietary’ with an appropriate legend, marking, stamp or other obvious written identification by the City. Proprietary Information shall also include oral and visual disclosures provided that such oral or visual disclosure is reduced to writing in summary form, clearly marked as ‘Proprietary’ and delivered to the University within thirty (30) days of the oral or visual disclosure.
- (c) The University agrees that it will not disclose or reveal to any other person or entity any Proprietary Information. Upon completion of the services to be provided, or at any time upon the written request by the City, the University will return to the City all copies and other materials pertaining to the Proprietary Information in possession of the University within ten (10) days from receipt of the written request. The obligation of non-disclosure and non-use shall not apply to the following: (1) Confidential Information at or after such time that it is or becomes publicly available through no fault of the affected party, (2) Confidential Information that is already independently known to the affected party, provided that the other party is advised promptly upon discovery that the Confidential



Information is already independently known as indicated by the affected party's written records, (3) Confidential Information at or after such time that is disclosed on a nonconfidential basis by a third party with the legal right to do so, or (4) Confidential Information required to be released by any governmental entity with jurisdiction provided that the affected party notify the other party prior to making such release of information.

- (d) Notwithstanding paragraphs (a), (b) and (c) above, the University as a State institution of higher education, engages only in projects that are compatible, consistent and beneficial to its academic role and mission and therefore the results of the research activities must be reasonably available for publication. The University agrees to keep confidential any City Proprietary Information supplied to it by the City which is clearly marked as such, during the course of the performance of the agreement by the University, and such information will not be included in any published materials without prior written approval by the City. The University reserves the right to publish non-proprietary results of the project in academic articles, conference presentations, student projects, reports, theses and dissertations, but agrees to grant the City a pre-release right of review for purposes of correction, clarification or other edit.
- (e) The confidentiality obligations set forth herein shall survive for a period of three (3) years following termination or expiration of the agreement.
- (f) It is recognized and understood that certain pre-existing inventions, ideas, know-how, discoveries, developments, technical information, devices, models, methods, computer data, software, hardware, source codes and confidential information (collectively, "Intellectual Property") are the separate property of the City or the University and are not affected by this Agreement. Neither party shall have any claims or rights in such separate pre-existing Intellectual Property of the other.

#### **5.04 Ownership of Documents.**

- (a) The City shall have title and all intellectual and other property rights, in and to all studies, reports, drawings, and all data used in the development of the same, including the results of any tests, surveys or inspections, and all photographs, drawings, drafts, studies, estimates, reports, models, notes and any other materials or work products, whether in electronic or hard copy format, created by the University pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the "Documents"), whether the Project for which the Documents were created is executed or not. The University shall identify and disclose, as requested, all such Documents to the City.
- (b) To the extent permitted by the U.S. Copyright Act, 17 USC § 101 et seq., as the same may be amended from time to time, the Documents are a "work made for hire," and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a "work made for hire," the University hereby

assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.

**5.05 Publication.**

- (a) The University, as a Colorado State institution of higher education, engages only in research that is compatible, consistent and beneficial to its academic role and mission, and therefore, the results of such research activities must be reasonably available for publication. However, the University agrees to keep confidential any confidential or proprietary information acquired from the City or from the work of the Students under this Agreement and in accordance with paragraphs 5.02 and 5.03 of this Agreement, and the University further agrees that such information will not be included in any published material without prior approval by the City.
- (b) The City will not include the name of the University in any advertising, sales promotion or other publicity matter without prior written approval of the University.

**5.06 Right to Hire.** The City shall have no obligation to offer employment to Professor Rens or the Students; however, should the City elect to offer employment to Professor Rens or any Student, it shall have the right to do so without any fee due to the University.

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

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

**5.09 Assignment and Subcontracting.** The City is not obligated or liable under this Agreement to any party other than the University named herein. The University understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to

such assignment or subcontracting. Any attempt by the University to assign or subcontract its rights hereunder without such prior written consent of the City shall, at the option of the City, automatically terminate this Agreement and all rights of the University hereunder. Such consent may be granted or denied at the sole and absolute discretion of the City. In the event any such subcontracting shall occur, with the City's approval, such action shall not be construed to create any contractual relationship between the City and such subcontractor, and the University named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement. No assignment shall relieve either party of the performance of any accrued obligation that such party may then have under this Agreement. This Agreement shall inure to the benefit of and be binding upon each party signatory hereto, its successors and permitted assigns, subsidiaries and affiliates.

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

**5.11 Insurance.**

- (a) The University agrees to secure and deliver to the City's Director of Risk Management at or before the time of execution of this Agreement, and to keep in force at all times during the term of the Agreement, as the same may be extended as herein provided, evidence of sufficient Worker's Compensation insurance to fully insure the University's responsibilities under state law.
- (b) Additionally, the University agrees to secure and deliver to the City at or before the time of execution of this Agreement, and to keep in force at all times during the term of the Agreement, evidence of business auto liability covering liability arising out of any auto (including owned, hired, and non-owned autos) and Commercial General Liability with the minimum limits: Bodily Injury and/or Death not less than \$150,000 per person, Property Damage, \$600,000 per occurrence.

**5.12 Liability.** Each party to this Agreement shall be liable for the actions and omissions of its respective officers, agents, employees and subcontractors, to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive the termination of this Agreement.

**5.13 Colorado Governmental Immunity Act.** The parties hereto understand and agree that the City and the University are relying upon, and have not waived, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.

**5.14 Contract Documents; Order of Precedence.** This Agreement consists of Sections 1 through 5, which precede the signature page, and the following attachments, which are incorporated herein and made a part hereof by reference:

Exhibit A      Scope of Work, Billing Rates, Reimbursables

In the event of an irreconcilable conflict between a provision of Sections 1 through 5 and the listed attachments, or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in descending order:

Sections 1 through 5  
Exhibit A

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

**5.16 Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

**5.17 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 herein, and the University further agrees not to hire or contract for services with any employee or officer of the City which would be in violation of the Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.
- (b) The University agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The University represents that it has disclosed any and all current or potential conflicts of interest and will continue to disclose any potential conflicts of interest for any project requested by the City. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the University by placing the University's own interests, or the interests of any party with whom the University 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 University written notice which describes the conflict. The University 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.

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

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

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

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

**5.22 Disputes.** All disputes between the City and University 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 Executive Director.

**5.23 Survival of Certain Contract Provisions.** The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement, (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein.

**5.24 Advertising and Public Disclosure.** The University 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 Executive Director, which will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by the City. The Executive Director shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of the City, including without limitation the Mayor, the Executive Director, City Council or the Auditor.

**5.25 Legal Authority.** University 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 University represents and warrants that he has been fully authorized by University to execute this Agreement on behalf of University and to validly and legally bind University 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 University or the person signing the Agreement to enter into this Agreement.

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

to the City: Executive Director of Public Works  
201 West Colfax Avenue, Dept. 608  
Denver, Colorado 80202

to the University: Attn: Kevin Rens  
Grants & Contracts, MS F428  
Anschutz Medical Campus, Bldg. 500, Rm W1126  
13001 E. 17<sup>th</sup> Place  
Box 7508  
Aurora, Colorado 80045-0508

With Legal Copy to: Attn: Christine Ahearn, J.D., Interim Director  
University of Colorado Denver  
Grants & Contracts, MS F428  
Anschutz Medical Campus, Bldg. 500, Rm W1126  
13001 E. 17<sup>th</sup> Place  
Aurora, Colorado 80045-0508  
P: 303-724-0090; F: 303-724-0814  
[OGC.Contracts@ucdenver.edu](mailto:OGC.Contracts@ucdenver.edu)

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

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

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

**5.29 Counterparts of this Agreement.** This Agreement will be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

**5.30 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 under the Agreement, 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.

**REMAINDER OF PAGE LEFT INTENTIONALLY BLANK**

**Contract Control Number:**

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_





**Contract Control Number:** PWADM-201842069-00

**Contractor Name:** UNIVERSITY OF COLORADO AT DENVER

By: Denise Queen 8/14/18

Name: Denise Queen  
(please print)

Title: Contracts Manager  
(please print)

**ATTEST: [if required]**

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

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

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



# Exhibit A

## Scope

The scope of work for this on-call contract may include, but is not limited to: technical and professional services for studies, inspections, assessments, project management, analysis, research, and general engineering related activities in support of the City and County of Denver Public Works Department. Task orders may be used to support the Capital Projects Management, Street Maintenance, Transportation and Mobility and any other agency, as approved by the Contract Manager.

## Fee Schedule

| <b>Title</b>            | <b>Hourly rate</b> | <b>Fringe rate</b> | <b>Overhead rate</b> | <b>Total rate</b> |
|-------------------------|--------------------|--------------------|----------------------|-------------------|
| Kevin Rens              | \$ 81.10           | 29.52%             | 26%                  | \$ 132.35         |
| Graduate student 1      | \$ 15              | 0.53%              | 26%                  | \$ 19.00          |
| Graduate student 2      | \$ 16              | 0.53%              | 26%                  | \$ 20.27          |
| Graduate student 3      | \$ 17              | 0.53%              | 26%                  | \$ 21.53          |
| Graduate student 4      | \$ 18              | 0.53%              | 26%                  | \$ 22.80          |
| Graduate student 5      | \$ 19              | 0.53%              | 26%                  | \$ 24.07          |
| Graduate student 6      | \$ 20              | 0.53%              | 26%                  | \$ 25.33          |
| Graduate student 7      | \$ 21              | 0.53%              | 26%                  | \$ 26.60          |
| Graduate student 8      | \$ 22              | 0.53%              | 26%                  | \$ 27.87          |
| Graduate student 9      | \$ 23              | 0.53%              | 26%                  | \$ 29.13          |
| Graduate student 10     | \$ 24              | 0.53%              | 26%                  | \$ 30.40          |
| Graduate student 11     | \$ 25              | 0.53%              | 26%                  | \$ 31.67          |
| Undergraduate student 1 | \$ 12              | 0.53%              | 26%                  | \$ 15.20          |
| Undergraduate student 2 | \$ 13              | 0.53%              | 26%                  | \$ 16.47          |
| Undergraduate student 3 | \$ 14              | 0.53%              | 26%                  | \$ 17.73          |
| Undergraduate student 4 | \$ 15              | 0.53%              | 26%                  | \$ 19.00          |
| Undergraduate student 5 | \$ 16              | 0.53%              | 26%                  | \$ 20.27          |
| Undergraduate student 6 | \$ 17              | 0.53%              | 26%                  | \$ 21.53          |
| Undergraduate student 7 | \$ 18              | 0.53%              | 26%                  | \$ 22.80          |
| Undergraduate student 8 | \$ 19              | 0.53%              | 26%                  | \$ 24.07          |
| Undergraduate student 9 | \$ 20              | 0.53%              | 26%                  | \$ 25.33          |

## Reimbursables

The University has included all reimbursable expenses in the rates listed above, except as noted below. Any reimbursable expenses shall be included in monthly invoices, but shall not be subject to the overhead rates listed in the contract. Those expenses shall be reimbursed at the expended cost.

As approved in the individual task order, the City shall reimburse the University for all direct expenses related to equipment, tools, and research materials needed to complete the agreed upon task. Any vehicle usage and expenses associated are the responsibility of the University, unless an individual task order includes vehicle costs.