

# CONTRACT REVIEW / PAYMENT SUMMARY SHEET

Agency: General Services  
 Contractor/Grantor Name: H C PECK & ASSOCIATES  
 Contract Number: CE65017  
 Contract Amount: \$400,000.00  
 Finance No/Series: N/A  
 A No.:

Business Unit: GSADM  
 Vendor Number: 1173  
 Amendment No.: Original  
 Contract Term: 11/01/06 - 10/31/07 + 5 1yr  
 Available Budget: 2007 budget  
 Form 42 Date: 6-Sep-06  
 Clerk Filing Number: 07-020

Prevailing Wage       Bond  
 Davis Bacon               Retainage

Amount	Line (2 char)	Dist (3 char)	Sched (3 char)	Account (6 char)	Fund (5 char)	Org (7 char)	Program (5 char)	Sub-Cls (5 char)	Project/Grant (5 char min / 15 char - max)	Act (2 char)
				801000	34010	0122102			ZZ50996_210	

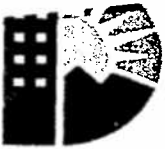
**Payment Terms**

Monthly invoices from contractor paid in accordance with the hourly rates, reimbursable expenses, and actual cost of sub-contractors plus 5% in exhibit "B". Total payments not to exceed \$400,000.

**Reimbursables**

**Scope:** CONTRACTOR PROVIDES RELOCATION CONSULTING SERVICES TO ASSURE THAT INDIVIDUALS AND BUSINESSES REQUIRED TO MOVE, AS THE RESULT OF FEDERALLY FUNDED PROJECTS, ARE RELOCATED IN ACCORDANCE WITH THE UNIFORM RELOCATION ASSISTANCE AND HOUSING AND COMMUNITY DEVELOPMENT ACTS. THIS AGREEMENT WAS PREVIOUSLY INITIATED BY CPCDA UNDER GE12015 AND IT'S AMENDMENTS AND GE40335 AND IT'S AMENDMENTS.

Contractor's Sign Date: 9 January, 2007  
 Received: 01/11/07  
 Contract Reviewer Name and Date: DP 11 January, 2007  
 Contractor's Sign Date: 11 January, 2007



# CITY AND COUNTY OF DENVER

DEPARTMENT OF LAW  
COLE FINEGAN  
CITY ATTORNEY

OFFICE OF CITY ATTORNEY  
MUNICIPAL OPERATIONS SECTION  
201 WEST COLFAX AVENUE, DEPT 1207  
DENVER, COLORADO 80202-5332  
PHONE: 720-913-3275  
FAX: 720-913-3180

# DENVER

THE MILE HIGH CITY  
JOHN W. HICKENLOOPER  
Mayor

## CONTRACT ROUTE SHEET

Barbara Melendez  
Department of General Services

Date: \_\_\_\_\_

H.C. Peck & Associates, Inc.

**CE65017-**

**An on-call contract for continuing real estate services. A one year contract with five (5) one year renewals.**

This is the proposed contract pursuant to the attached Form 42.

Please review the contract's language to ensure it complies with your intent.

Upon approval, please make \_\_\_\_\_ copies and attach the required exhibits.

Securely flag each execution page.

Obtain original signatures of second party & recommending/approving City officials on each counterpart.

When executed, please return all contracts to this office with this route sheet.

**Do not date the contract.**

### Initiating Authority and Other Recommending/Approving Agencies:

### Revisions

	To Agency		To Agency	
	In	Out	In	Out
DEN SVCS				

Contract's Filing No.:

**07-020**

Date Filed: \_\_\_\_\_

Council Bill: \_\_\_\_\_

Finance No.:

Series of: \_\_\_\_\_

Published: \_\_\_\_\_

Assistant City Attorney: Jennifer M. Weflen

Date sent to Mayor:

**1/8/07**  
Date

**1/8/07**  
In (to ACA)

Mayor Signed Contract:

**1-9-07** **TC**  
Date Initials

**1/9/07** **W**  
In (to Mayor) Out (to Clerk)

Effective date of contract if different from date Mayor signs: \_\_\_\_\_

Date sent to Clerk:

**1-10** **1-10-07**  
In (to Clerk) Out (to Aud.)

Auditor Signed Contract:

(Attached Clerk copy for scanning) Date \_\_\_\_\_ Initials \_\_\_\_\_

\_\_\_\_\_ In (to Aud.) Out (to CAO)

Contract rejected by Auditor: Date Returned to CAO \_\_\_\_\_ Date Fixed and Returned to Auditor \_\_\_\_\_

Copies received by City Attorney: Contractor Copy \_\_\_\_\_ City Clerk Copy: \_\_\_\_\_

Signature of Second Party (State, Federal, etc.): \_\_\_\_\_

Additional Information: \_\_\_\_\_

*Handwritten notes and stamps:*  
A 2-2-07  
301113  
CLEARANCE UNIT  
1-10-07

# CONTRACT APPROVAL AND PREPARATION REQUEST CITY AND COUNTY OF DENVER

*Peri*

Mayor / City Attorney	Heat Ticket Number: 00065246
Requester: Jen Weflen	Contract Administration Officer: Barbara Melendez
Date: 2006-09-06	Phone: 720-913-8802
Funding Authority: GS-FPM	Division: General Services Administration
City Contact Familiar with this Contract: Steve Wirth, 720-913-1503	
Contractor was not selected by lowest competitive bid, cite reasons: N/A	
City Council approval is required prior to entering this contract: No	
ASPEN 15 Form has been forwarded to Budget and Management: No	
Contractor Name and Address	5. Contract Control Number: CE65017
Peck & Associates, Inc.	6. Type of Contract: Exp. T Rev. F Orig. F Amend. F
Blake St., Suite 180	7. Type of Entity: Corp.
Denver, CO 80205	8. IRS / SSN #: N/A
	9. Project/Grant ID + Name: ZZ50996_210
	10. Ordinance: Series:
	11. Contract Term: 2006-11-01 to 2011-10-31

11/24/06  
335RM

APPROVED

Total amount included in this contract request: \$400,000.00	14. Total with amendments: \$400,000.00
Amendment, previous total: \$0.00	
If multiple expenditure authorities are involved, name the authorities:	

Funding sources:							
34010	Org.	0122102	Acct.	801000	Amt.	\$400,000.00	Bus. Unit
	Org.		Acct.		Amt.	\$0.00	Bus. Unit
	Org.		Acct.		Amt.	\$0.00	Bus. Unit
Program		Sub-Class		Project/Grant		ZZ50996_210	
Program		Sub-Class		Project/Grant			
Program		Sub-Class		Project/Grant			

Describe the project in general terms:  
 Call Contract for continuing real estate services. A one year contract with five (5) one year renewals.

Supplemental Materials - transmit to City Attorney as e-mail attachment or hardcopy:

ASPEN 15	<input type="checkbox"/>	Cert. of Insurance	<input type="checkbox"/>	Evidence of Bonding	<input type="checkbox"/>	Real Estate Desc.
RFP	<input type="checkbox"/>	RFQ	<input type="checkbox"/>	Scope of Work	<input type="checkbox"/>	Other

<b>APPROVALS:</b> Agencies as needed: Office Bldgs. Council on Disabled Service Authority	Dept/Agency Head: LUIS COLON	Date: 2006-11-20
	Budget and Mgt.: Stephanie Iwanski	Date: 2006-11-20
	Risk Mgt.: Sally Alexander	Date: 2006-11-20
	Other Authority:	Date:
	Other Authority:	Date:
	Other Authority:	Date:
	Other Authority:	Date:
	Other Authority:	Date:

I hereby certify that the articles or services requested herein are necessary for the operation of this agency, are not available within existing resources, are properly chargeable to the accounts detailed in attached ASPEN 15 and the quarterly allotments on file with the Mayor in respect to which funds have been pre-encumbered, and that proposed undertaking is in conformity with the Mayor's policy.

LUIS COLON Funding Authority Date: 2006-11-20	 City Attorney Date: 11/8/07
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CITY CLERK  
OFFICIAL COPY

97-020

AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "City") and H.C. PECK AND ASSOCIATES, INC., whose address is 2399 Blake Street, Suite 180, Denver, Colorado 80205 (the "Contractor"), collectively referred to as the Parties.

1. **WORK TO BE PERFORMED:** The Contractor, under the general direction of, and in coordination with, the Director of the Department of Facilities Planning and Management, or other designated supervisory personnel (the "Director"), shall diligently perform the consulting services and produce all the deliverables requested by the Director on an as needed, on-call basis. The work to be performed for a specific project assigned by the Director will be requested in a Scope of Work issued by the City to the Contractor and signed by the Director and the Contractor ("Scope of Work"). Such Scope of Work will include a description of the work to be performed by the Contractor and a budget for such work. The Scope of Work will specifically identify which of the services outlined in Exhibit A are to be performed for the specific project. The Contractor agrees that during the term of this Agreement it shall fully coordinate all services performed under this Agreement through the Director of the Department of Facilities Planning and Management, or as otherwise directed by the City. The City's authorized representative for day-to-day administration of the Contractor's work under this Agreement is the Project Director, as assigned by the Director. The Contractor shall submit work orders, correspondence, pay requests, and submittals to the Project Director. The Contractor shall faithfully perform the services required by this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals who perform services of a similar nature to those described in this Agreement.

2. **TERM:** The term of the Agreement is from November 1, 2006, to October 31, 2007, unless terminated earlier pursuant to the provisions of this Agreement. This Agreement shall be renewed automatically on a yearly basis for up to five (5) years through October 31, 2011, unless terminated by the City or the Contractor in writing.

3. **COMPENSATION AND PAYMENT:**

A. **Fee:** The City agrees to pay to the Contractor, and the Contractor agrees to accept as its sole compensation for its services rendered and costs incurred under this Agreement, a fee to be agreed upon by the parties, but not to exceed, in total, the Maximum Contract Liability in subsection C below. The fee for individual projects assigned to Contractor by the Director shall be as agreed to in the Scope of Work's budget prior to the commencement of work on the project by the Contractor, but in all cases will follow the appropriate Hourly Rate Schedule attached to this Agreement as Exhibit B. In addition, reimbursable expenses shall be those and only those outlined in Exhibit B; all other expenses are reflected in Contractor's hourly rates. Finally, the cost to the City of any sub-consultants, which costs must be disclosed in the Scope of Services, shall be the actual cost of the sub-consultant(s) to the Contractor plus five percent (5%), also as reflected in Exhibit B.

B. **Invoicing:** Contractor shall submit invoices to the Project Director monthly, or upon the delivery of the project to the City, whichever is earlier. All invoices will

specify the work performed, the time to perform the work, and the rate at which the work is being charged. The Contractor shall invoice for each assigned project separately, but may be paid for multiple invoices each month. Such invoices shall reflect the Contractor's actual hours, sub-consultant costs, total expended to date on each assigned project, additional and special services costs and reimbursable costs, and shall be based on the hourly rates or other rates for services contained in **Exhibit B**. The Consultant shall maintain hourly records of the time worked by its personnel and sub-consultants, records of all permissible reimbursable expenses and records of expendable supplies and services as necessary for any audits by the city, and shall bill the City monthly for fees and costs accrued during the preceding month. The Director or his designee will review and approve all invoices prior to payment by the City.

**E. Maximum Contract Liability:** Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Contractor under the terms of this Agreement for any amount in excess of Four Hundred Thousand Dollars (\$400,000.00). The Contractor acknowledges that the City is not obligated to execute an Agreement or an amendment to Contractor for any further services and that any services performed by Contractor beyond that specifically described in the Scope of Work described above are performed at Contractor's risk and without authorization under this Agreement.

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

**4. STATUS OF CONTRACTOR:** The parties agree that the status of the Contractor 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 Contractor or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

**5. TERMINATION:**

**A.** The City has the right to terminate this Agreement, with or without cause, on thirty (30) days written notice to the Contractor. However, nothing herein shall be construed as giving the Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Director.

**B.** The Contractor has the right to terminate this Agreement with cause by giving not less than thirty (30) days written notice to the City.

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

~~D. If this Agreement is terminated by the Contractor, or if this Agreement is~~  
terminated by the City for cause, the Contractor 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 Contractor performed prior to the date of the termination notice, but which had not yet been approved for payment; and (3) the cost of any work that is needed to accomplish an orderly termination of the work and is approved in writing by the Director. If this Agreement is terminated for the convenience of the City and without the fault of the Contractor, the Contractor shall also be compensated for any reasonable costs it has actually incurred in performing services prior to the date of the termination.

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

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

6. **EXAMINATION OF RECORDS:** The Contractor 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 Contractor, involving transactions related to this Agreement.

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

8. **INSURANCE:**

A. **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or should any coverage be

~~reduced before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.~~ If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The City reserves the right to require the Contractor to provide a bond, at no cost to the City, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor further agrees to have its agent or broker provide proof of Contractor's required insurance on [www.Ins-Cert.com](http://www.Ins-Cert.com) and link the information to the City. The City reserves the right to require the Contractor to provide a certificate of insurance, a policy, or other proof of insurance as required by the City's Risk Administrator in his sole discretion.

**C. Additional Insureds:** For general liability and excess/umbrella liability, Contractor's insurer shall name the City as an additional insured.

**D. Waiver of Subrogation:** For all coverages, Contractor's insurer shall waive subrogation rights against the City.

**E. SubContractors:** Contractor shall include all such sub-Contractors, subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subContractors maintain the coverages required by this Agreement. Contractor agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the City.

**F. Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**G. General Liability:** Contractor shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

**H. Automobile Liability:** Contractor shall maintain limits of \$1,000,000 for bodily injury per person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage applicable to all vehicles operating on City property and elsewhere .

**I. Professional Liability:** Contractor shall maintain limits of \$1,000,000 for each claim, and \$1,000,000 aggregate limit for all claims.

**O. Additional Provisions:**

- (1) For all general liability, the policies must provide the following:
  - (a) If any aggregate limit is reduce by twenty-five percent (25%) or more by paid or reserved claims, the Contractor shall notify the City within ten (10) days and reinstate the aggregates required;
  - (b) Unlimited defense costs in excess of policy limits;
  - (c) Contractual liability covering the indemnification provisions of this Agreement;
  - (d) A severability of interests provision;
  - (e) Waiver of exclusion for lawsuits by one insured against another;
  - (f) A provision that coverage is primary; and
  - (g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

9. **INDEMNIFICATION:** The Contractor shall defend, release, indemnify and hold harmless the City, its officers, agents and employees from and against: (1) any and all damages, including loss of use, to property, including City property, or (2) injuries to or death of any person or persons (including officers, agents and employees of the City), and (3) any and all claims, demands, suits, causes of action, liabilities, fines, penalties, costs, expenses (including reasonable attorney fees, expert witness fees and all associated defense fees), or proceedings of any kind or nature, including workers' compensation claims, of or by anyone, regardless of the legal theory(ies) upon which premised, in any way resulting from, or arising out of the acts or omissions of the Contractor or those performing under it in connection with its operations or performance under this Agreement or its use or occupancy of real or personal property hereunder, including acts or omissions of the officers, employees, agents, contractors, representatives, invitees, or licensees of the Contractor or its subcontractors. The Contractor's obligation to indemnify or hold harmless the City, its officers, agents and employees under this paragraph shall not apply to liability or damages proximately caused by and apportioned to the negligence of the City's officers, agents and employees.

This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion elects to provide its own defense. The City retains the right to disapprove counsel, if any, selected by the Contractor to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised.

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

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



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

**12. ASSIGNMENT AND SUBCONTRACTING:**

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

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

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

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

**15. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this

~~Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect nor bind the City. This Agreement and any amendments to it shall be binding upon the Parties and their successors and assigns.~~

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

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

The Contractor agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, 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 Contractor written notice which describes the conflict. The Contractor shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

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

City : Director of Facilities Planning and Management  
201 West Colfax Avenue  
Denver, Colorado 80202

Contractor: H.C. Peck and Associates, Inc.  
2399 Blake Street, Ste. 180  
Denver, Colorado 80205

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

19. **DISPUTES**: All disputes between the City and Contractor regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Director.

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20. **GOVERNING LAW; VENUE:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

21. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of services under this Agreement, the Contractor 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 Contractor agrees to insert the foregoing provision in all subcontracts hereunder.

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

23. **LEGAL AUTHORITY:** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor 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 Contractor or the person signing the Agreement to enter into this Agreement.

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

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

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

~~Contractor's obligations to provide insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.~~

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

28. **PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:**

A. This Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, as now existing or hereafter amended, (the "Certification Statute"). Compliance by the Consultant and its subcontractors with the Certification Statute, and the execution of the 'Certification', **Exhibit C** attached hereto and incorporated by reference, are both expressly made a contractual condition of this Agreement.

B. The Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Consultant shall not enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien or that fails to certify to the Consultant that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. The Consultant represents, warrants, and agrees that:

- (1) It has verified or attempted to verify that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the U.S. Social Security Administration and U.S. Department of Homeland Security ("Basic Pilot Program" or "BPP"), as defined in §8-17.5-101(1), C.R.S., or that if it is not accepted into the BPP prior to entering into this Agreement, it shall apply to participate in the BPP every three months until either it is accepted into the BPP or its has completed its obligations under this Agreement, whichever occurs first.
- (2) It will not use the BPP to undertake pre-employment screening of job applicants while performing its obligations under this Agreement.
- (3) If it obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs with or contracts with an illegal alien, it will notify such subcontractor and the City within three days, and terminate such subcontractor if within three days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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- (4) It shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment under authority of §8-17.5-102(5), C.R.S.

D. If the Consultant fails to comply with any provision of this Section 28, the City may terminate this Agreement for breach and the Consultant shall be liable for actual and consequential damages to the City.

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

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

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

ATTEST: DEPUTY CITY CLERK

CITY AND COUNTY OF DENVER

By: Arsla Vincent Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver



By: [Signature] MAYOR

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

Attorney for the City and County of Denver

By: [Signature] Assistant City Attorney

By: [Signature] For Facilities Planning and Management

REGISTERED AND COUNTERSIGNED:

By: [Signature] Auditor  
Contract Control No. ~~0662046~~ CE65017

“CITY”

H.C. PECK AND ASSOCIATES, INC.

By: [Signature] Name  
Executive Vice President Title

“CONTRACTOR”

EXHIBIT A: Scope of Work (Right-of-Way Acquisition, Relocation)

EXHIBIT B: Rate Schedule (Hourly, Reimbursable Expenses, Subconsultants; title services; title insurance)

EXHIBIT C: Illegal alien certification required by §8-17.5-102, C.R.S.

SCOPE OF WORK (RIGHT-OF-WAY ACQUISITION PHASE)

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Peck & Associates will emphasize a comprehensive approach in providing right-of-way services to the City & County of Denver. We employ multi-disciplined personnel who possess both a broad and in-depth understanding of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Uniform Assistance Act Amendments of 1987, Federal and State regulations and procedures as related to eminent domain, and State and Local laws and regulations as applicable to this project. Project activities include the day to day project coordination of: appraisal and appraisal review services, value determinations, review of legal descriptions and title work, document preparation, negotiation for acquisition with property owners, relocation assistance, real estate closings, and if necessary, support for eminent domain proceedings.

**TITLE**

The Title Services Division of Peck & Associates; will emphasize a coordinated approach in providing title services for the City. We employ licensed title personnel who have not only a broad and in-depth background in title examination, but also understand the need for timely and accurate title information so as to meet overall project deadlines.

I. GENERAL

A. Provide the initial property owner research (cursory title) so as to aid in the creation of the project database and schedules.

B. Prepare and maintain title files as well as other pertinent acquisition files, records and reports.

II. TITLE COMMITMENTS/ TITLE POLICIES

As of January 1, 2000, Peck & Associates offers title commitments and title insurance underwritten by United General Title Insurance Co. This is an alternative title service in lieu of the standard memorandum's of ownerships provided in the past.

III. ESCROW AND CLOSING SERVICES

When settlement has been reached and a signed memorandum of agreement or contract is consummated, the right-of-way specialist will prepare a checklist of necessary documents for our closing agents, who will obtain releases and/or subordinations on properties burdened with financial encumbrances; prepare and have the proper documents executed; verify that taxes are prorated and paid; coordinate with the City staff to obtain warrants, and insure that documents are properly notarized and recorded as soon as possible.

#### IV. SURVEY SUPPORT

At the onset of the project, an agent will be assigned to the project and begin the coordination of design phase public involvement, title reports, permission to survey, and phase I environmental analysis of the affected properties. A key issue in the process is the communication and coordination of final design plans, appraisal, right-of-way plans, and title information so that critical time elements are not lost dealing with revisions to the plans. The title agent will provide assistance to the surveyors in preparing parcel descriptions and drawings by aiding them in the interpretation of title documents that may affect ownership.

#### V. TITLE UPDATES FOR COURT

Peck & Associates will provide (updated) title information to the degree necessary to assist the authority and outside counsel in condemnation proceedings.

### APPRAISAL

As right-of-way plans near completion, the appraisers will be assigned to begin collecting preliminary sales search data for the appraisal process. H. C. Peck & Associates, Inc. will provide a licensed certified general appraiser that is pre-approved by CDOT for Federal Aid work.

### APPRAISAL REVIEW

It is the responsibility of the review appraiser to establish the Fair Market Value (FMV) for the property to be acquired. The FMV must be concurred in by the City prior to making the offer to the property owner. This review should be done by a licensed Certified General Appraiser with the knowledge of the Federal Appraisal Review process. H. C. Peck and Associates will provide a Review Appraiser experienced in Federal Aid work.

### ACQUISITION

Land acquisition involves an orderly series of activities and tasks, each structured to result in the timely completion of the City's project. The following is Peck & Associates' methodology for providing land acquisition services to the City.

#### I. GENERAL

A. Provide coordination of tasks with the City, engineering consultant, surveyor, title and closing specialist, appraisers, environmental consultants, and all affected owners of real property rights.

B. Create and maintain a milestone schedule and status reports based on project requirements for monitoring throughout the project. The schedule should indicate progress of each element of the project.

*Heb*



~~C. Prepare and maintain parcel files as well as other pertinent acquisition files, relocation files, records and reports. These files will include the negotiator's log and will be documented in accordance with all applicable laws, rules, and regulations. All files will be available for inspection during the project by the City at any time.~~

## II. PREPARATION FOR NEGOTIATION

A. Coordinate with appraisers and review appraisals for determination of the Fair Market Value (FMV).

B. Right-of-way specialists will thoroughly review the following items:

1. Right-of-way maps
2. Legal descriptions
3. Construction plans and specifications
4. Appraisals and the FMV
5. Environmental reports

C. The agent will prepare a letter of offer/intent to acquire or memorandum of agreement which will include the following:

1. Legal description of property to be acquired
2. Interest of property owner
3. Any improvements to be acquired from the property owner and/or other owners.
4. Summary of just compensation based on the FMV determination by the review appraiser, including damages and benefits in the case of a partial taking, as well as any adjustments to the value resulting from environmental considerations.

D. Any notice that the City is required to give to property owner or occupant will be served personally or sent by certified or registered first-class mail with return receipt.

E. Should the acquisition involve a relocation, the person being displaced will be notified as soon as feasible of the City's relocation policies.

## III. NEGOTIATION

A. During this period the agent will record every contact made by him/her with the property owner. This log will include the important details of the negotiation as follows:

1. Offers and counter proposals discussed/made
2. Dollar amounts
3. Environmental issues if applicable
4. Construction design issues
5. Possession dates, closing dates, construction schedule, and moving dates, if applicable.

B. The right-of-way agent will present the offer and explain the acquisition process, including all matters relating to the construction and access controls, to avoid misunderstandings. The agent will go over the offer with the proper City staff and present any additional information which the property owner has brought to our attention. If the new information presented warrants a revised FMV, then a new just compensation and offer will be presented in writing.

C. If there is still a failure to agree, it may be in the public interest to settle for an amount over the FMV. The specialist will provide necessary written analysis to the City for a decision regarding an administrative settlement.

#### IV. CLOSINGS

When settlement has been reached and a signed memorandum of agreement or contract is consummated, the right-of-way specialist will prepare a checklist of necessary documents. The closings will be coordinated by Peck & Associates with the City. Peck & Associates or the City's title company will obtain releases and/or subordinations on properties which have financial encumbrances, prepare and have the proper documents executed, verify that taxes are prorated and paid, coordinate with the City staff to obtain warrants, and insure that documents are properly notarized and recorded as soon as possible.

#### V. LITIGATION SUPPORT

Should there be a failure to reach a negotiated settlement, the City may acquire the property by exercising its power of eminent domain. This is done by instituting formal condemnation proceedings with the appropriate District Court. Peck & Associates understands the importance of maintaining complete and accurate files to enable them to provide assistance for pre-trial hearings and depositions.

All Peck & Associates proposed personnel could be qualified by the court as expert witnesses. As "failure to negotiate" is rarely an issue, our employees have not been asked to give testimony. We have, however, provided the following litigation support services:

- \* Coordinate titles updates and prepare list of names and addresses of parties to be served.
- \* Coordinate appraisal update to day of taking.
- \* Review documentation
- \* Review and deliver complete file.
- \* Coordinate interaction between City attorney and condemnee.
- \* Coordinate and create exhibits.
- \* Assist City attorney in preparation of witnesses.

*peck*

## RELOCATION

### I. RELOCATION PLAN

For the selected alignment, an analysis will be prepared of the impacts of displacement on residences, businesses and non-profit operations that may be required to move as a result of the acquisition of real property. At a minimum the analysis will include:

- A. Conducting personal interviews with each person (individual, family or business) to be displaced to determine specific characteristics and relocation needs.
- B. Providing each person to be displaced with a general information brochure that provides information regarding the relocation assistance program.
- C. Performing a survey of housing and commercial resources suitable for replacement properties, and preparing a narrative relocation plan identifying potential relocation difficulties and developing possible methods of mitigation.

### II. RELOCATION ASSISTANCE

Peck & Associates relocation agent will conduct all relocation assistance activities in accordance with applicable laws, rules, and regulations. These activities are as follows:

- A. Develop and maintain continuous data regarding availability of comparable housing and commercial properties to accommodate those to be displaced.
- B. Prior to the initiation of negotiations and on the basis of the approved FMV appraisal, preparation of a supplemental housing computation to establish the maximum replacement housing benefits that a residential displacee may be eligible to receive. Computation of benefits will be submitted for City approval prior to any offer being made.
- C. Determine all necessary moving expenses for residential and business occupants. Moving determination findings will be submitted to the City prior to any offer being made.
- D. Compute all entitlements for reimbursable incidental expenses and mortgage interest differential payments for eligible residential displacees.
- E. Coordinate the request for the issuance of all funds necessary to provide payment of eligible relocation expenses in a timely manner.
- F. Assist the City in the review and evaluation of any appeal received regarding the eligibility for and/or the amount of relocation entitlement.
- G. Provide all necessary relocation assistance advisory services to displaced persons.

*7/12/00*

2006/07 HOURLY RATE SCHEDULE

<u>Personnel Classification</u>	<u>Rate per Hour</u>
Project Manager	<u>79.67</u>
Senior Right-of-Way Agent III (Acquisition & Relocation)	<u>72.84</u>
Right-of-Way Agent II (Acquisition & Relocation)	<u>61.46</u>
Right-of-Way Agent I (Acquisition & Relocation)	<u>52.36</u>
Support Staff	<u>41.66</u>

Reimbursable Expenses

Proposed hourly rates do not include the following expenses reimbursable at cost:

- Reproduction costs (third party)
- Courthouse instrument copies
- Recording, notary, license & permit fees
- Postage, delivery and express mail
- Maps
- Parking and tolls
- Mileage at applicable IRS rate
- Long Distance Telephone & Fax

Subconsultants - Cost plus <sup>5</sup>~~10~~%

7/01/2006

2008 HOURLY RATE SCHEDULE

<u>Personnel Classification</u>	<u>Rate per Hour</u>
Project Manager	<u>83.65</u>
Senior Right-of-Way Agent III (Acquisition & Relocation)	<u>76.48</u>
Right-of-Way Agent II (Acquisition & Relocation)	<u>64.53</u>
Right-of-Way Agent I (Acquisition & Relocation)	<u>54.98</u>
Support Staff	<u>43.74</u>

Reimbursable Expenses

Proposed hourly rates do not include the following expenses reimbursable at cost:

- Reproduction costs (third party)
- Courthouse instrument copies
- Recording, notary, license & permit fees
- Postage, delivery and express mail
- Maps
- Parking and tolls
- Mileage at applicable IRS rate
- Long Distance Telephone & Fax

Subconsultants - Cost plus <sup>5</sup>10%

1/01/2008

2009 HOURLY RATE SCHEDULE

<u>Personnel Classification</u>	<u>Rate per Hour</u>
Project Manager	<u>87.83</u>
Senior Right-of-Way Agent III (Acquisition & Relocation)	<u>80.30</u>
Right-of-Way Agent II (Acquisition & Relocation)	<u>67.75</u>
Right-of-Way Agent I (Acquisition & Relocation)	<u>57.73</u>
Support Staff	<u>45.93</u>

Reimbursable Expenses

Proposed hourly rates do not include the following expenses reimbursable at cost:

- Reproduction costs (third party)
- Courthouse instrument copies
- Recording, notary, license & permit fees
- Postage, delivery and express mail
- Maps
- Parking and tolls
- Mileage at applicable IRS rate
- Long Distance Telephone & Fax

Subconsultants - Cost plus <sup>5</sup>~~10~~%

1/01/2009

**TITLE SERVICES RATE SCHEDULE**  
**FOR 2007**

(Adams, Arapahoe, Denver, Boulder, Broomfield, Jefferson, Douglas, Weld Counties)

**TITLE COMMITMENTS:**

Includes (5 hours of) title research and preparation of a Commitment to insure title at the posted rate schedule. Commitments that require over 5 hours of research will be invoiced at an additional \$86.75 per hour. A 5-year title history is available upon request. Title updates are available for \$173.50/commitment.	\$435.00/parcel (Base price)
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**TITLE POLICIES:**

Title insurance policies are underwritten by United General Title Insurance Company.	Per Posted County Rates
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**O & E REPORTS/MISCELLANEOUS RESEARCH:**

Cursory Title Research with current vesting deed and current financial encumbrance(s). Does not include any examination of title.	\$86.75 per hour
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**MEMORANDUM OF OWNERSHIP:**

A forty-year title research showing current ownership, financial Encumbrances, tax information, physical encumbrances burden the subject Parcels indexed within the search period. Includes 5-year title history.	\$86.75 per hour
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**CLOSINGS:**

Improved Residential	\$260.00*
Improved commercial, vacant commercial, vacant residential	\$345.00*

\* Does not include time necessary to secure Partial Releases and/or Subordinations (billed \$86.75/hour).

Tax Certificates	\$25.00 or actual cost over \$25.00
Wire Transfers	\$25.00
Courthouse Copies & Maps	At Cost
Special Delivery	\$25.00 or actual cost over \$25.00

10/31/06





**EXHIBIT C**

**CERTIFICATION UNDER §8-17.5-102, C.R.S.**

The Consultant, in compliance with §8-17.5-102, C.R.S., certifies that at the time of the execution of this Certification:

1. The Consultant does not knowingly employ or contract with an illegal alien.
2. The Consultant has participated or attempted to participate in the Basic Pilot Employment Verification Program in order to verify that it does not employ any illegal aliens.

\_\_\_\_\_  
H.C. Peck and Associates, Inc.

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

Signature

\_\_\_\_\_  
J E PARKER JR

[Printed] Name of Person Signing

\_\_\_\_\_  
EXECUTIVE VICE PRESIDENT

[Printed] Title

DATE: 11-27-06