

A G R E E M E N T

(Real Estate Right of Way Services – On call)

THIS AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and **H.C. PECK AND ASSOCIATES, INC.**, whose address is 4001 Fox Street, Denver, Colorado 80215 (“Consultant”), collectively referred to as the “Parties”.

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

1. WORK TO BE PERFORMED:

a. Selection Method of a Right-of-Way Consultant for a Particular Project:

The City may, but is not obligated to, request that the Consultant prepare a formal and/or informal proposal with a maximum estimated fee, delineated scope of work and time schedule for one or more right-of-way acquisition project(s) requested by the City on an as needed, on-call basis. The Consultant agrees and understands that the City may solicit formal and/or informal proposals in a “mini-bid” format for a particular project from all of its on-call professional right-of-way contractors. The City will evaluate the proposals with criteria established by the City, in its sole and absolute discretion, and may award work on a particular project from the submitted proposals to one or more right-of-way contractors for services specified by the City.

b. Scope of Work: If selected for a particular project by the City, the Consultant, under the general direction of, and in coordination with, the Director of the Division of Real Estate, or other designated supervisory personnel (“Director”), shall diligently perform the consulting services and produce all the deliverables requested by the Director. 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 Consultant and signed by the Director and the Consultant (“Scope of Work”). Such Scope of Work will include a description of the work to be performed by the Consultant, a time schedule and a budget for a particular project. The Scope of Work will specifically identify which of the services outlined in **Exhibit A** are to be performed by the Consultant for the particular project. The Consultant agrees to complete the project within the limits of the approved final proposal cost and during the approved time schedule, unless otherwise modified by the City. Should all project work exceed such cost, the Consultant agrees

to complete the project at no additional cost to City and, in a manner acceptable to the City. The Consultant agrees that during the term of this Agreement it shall fully coordinate all services performed under this Agreement through the Director, or as otherwise directed by the City. The City's authorized representative for day-to-day administration of the Consultant's work under this Agreement is the Division of Real Estate Project Manager, as assigned by the Director. The Consultant shall submit work orders, correspondence, pay requests, and submittals to the Project Manager. The Consultant 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.

b. Non-exclusivity: The Consultant acknowledges and agrees that this Agreement does not create an exclusive right to perform any right-of-way services for which the City may contract. The City may enter agreements with other consultants or contractors to perform the same or similar services and reserves the right to select, at the discretion of the Director, the consultant which is the most cost effective, best suited, and/or most readily able to perform the requested services.

2. TERM: The term of the Agreement runs from October 1, 2015 to October 10, 2020, unless this Agreement is terminated earlier as provided in this Agreement or unless this Agreement is extended as provided in a separate amendment to this Agreement ("Term"). If the term of any Scope of Work extends beyond the Term specified above, this Agreement shall remain in full force and effect but only as to such Scope of Work; however, the total amount paid to the Consultant shall not exceed the Maximum Contract Amount specified in sub-section 3.c below.

3. COMPENSATION AND PAYMENT:

a. Compensation. The City agrees to pay to the Consultant, and the Consultant agrees to accept as its sole compensation for its services rendered and costs incurred under this Agreement, a fee to be agreed upon by the parties, but not to exceed, in total, the Maximum Contract Liability in subsection 3.c. below. The fee for individual projects assigned to Consultant 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 Consultant, 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 A**; all other expenses are reflected in Consultant's hourly rates.

b. Invoicing for Fees and Expenses: Consultant shall submit invoices to the Project Manager monthly, or upon the delivery of the project to the City, whichever is earlier. For fees earned by the Consultant, all invoices will specify the work performed, the time to perform the work, and the rate at which the work is being charged. The Consultant shall invoice for each assigned project separately, but may be paid for multiple invoices each month. Such invoices shall reflect the Consultant'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.

c. Maximum Contract Amount: 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 Consultant under the terms of this Agreement for any amount in excess of **FIVE MILLION DOLLARS AND ZERO CENTS (\$5,000,000.00)**. The Consultant acknowledges that the City is not obligated to execute an Agreement or an amendment to Consultant for any further services and that any services performed by Consultant beyond that specifically described in the Scope of Work described above are performed at Consultant'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 Consultant shall be that of an independent contractor retained on a contractual basis to perform

professional or technical services for limited periods of time as described in Section 9.1.1E(x) of the Charter of the City. It is not intended, nor shall it be construed, that the Consultant or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

5. TERMINATION:

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

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

C. If this Agreement is terminated by the City for cause, the Consultant shall be compensated for, and such compensation shall be limited to: (1) the sum of the amounts contained in invoices for fees and/ or expenses which it has submitted and which have been approved by the City; (2) the reasonable value to the City of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment; and (3) the cost of any work that is needed to accomplish an orderly termination of the work and is approved in writing by the Director. If this Agreement is terminated for the convenience of the City and without the fault of the Consultant, the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services prior to the date of the termination.

D. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City that the Consultant is using by whatever method the City deems expedient. The Consultant shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City; and these documents and materials shall be the property of the City. Copies of work product incomplete at the time of

termination shall be marked "DRAFT-INCOMPLETE". The City shall use any and all such incomplete documents or incomplete data at its own risk.

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

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

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:

(1) General Conditions: Consultant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Consultant shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-

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

(2) **Proof of Insurance:** Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant may not commence services or work relating to the Agreement prior to placement of coverage. Consultant certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Consultant's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(3) **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Consultant and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(4) **Waiver of Subrogation:** For all coverages, Consultant's insurer shall waive subrogation rights against the City.

(5) **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure

and maintain the same coverages required of the Consultant. Consultant shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Consultant agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

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

(7) **Commercial General Liability:** Consultant shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(8) **Business Automobile Liability:** Consultant shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement

(9) **Professional Liability (Errors & Omissions):** Consultant shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

(10) **Additional Provisions:**

- (a) For Commercial General Liability, the policy must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;

- (ii) Defense costs are in excess of policy limits;
 - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (b) For claims-made coverage:
- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- (c) Consultant shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Consultant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

9. INDEMNIFICATION:

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

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

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

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

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

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 Consultant shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against City property, including but not limited to land, facilities, improvements or equipment.

12. ASSIGNMENT AND SUBCONTRACTING:

A. The Consultant agrees that it will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the 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 Consultant 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 Consultant. 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 Consultant 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 Consultant's subcontractor. The Consultant 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 Consultant 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 Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters that obligate the City must be by the City, as required by Charter and ordinance.

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 Consultant further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

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

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 Real Estate
201 West Colfax Avenue, Dept. 1010
Denver, Colorado 80202

Consultant: H.C. Peck and Associates, Inc.
4001 Fox Street
Denver, Colorado 80215

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

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

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 Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. The Consultant agrees to insert the foregoing provision in all subcontracts hereunder.

22. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Consultant 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 Consultant from City facilities or from participating in City operations.

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

there is a dispute as to the legal authority of either Consultant or the person signing the Agreement to enter into this Agreement.

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

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

28. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

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

b. The Consultant certifies that:

- (1)** At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2)** It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all

employees who are newly hired for employment to perform work under this Agreement.

- c. The Consultant also agrees and represents that:
- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.
 - (4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Consultant to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
 - (5) If it obtains actual knowledge that a sub-Consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Consultant will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.

29. ADVERTISING AND PUBLIC DISCLOSURE: The Consultant shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without first obtaining the written approval of the 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.

32. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability

of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

SIGNATURES ON FOLLOWING PAGES

Contract Control Number: FINAN-201523944-00

Contractor Name: H C PECK & ASSOCIATES INC

By: 

Name: J. PARKER, JR.
(please print)

Title: EXECUTIVE VICE PRESIDENT
(please print)

ATTEST: [if required]

By: 

Name: Michelle Anthony
(please print)

Title: Assistant Secretary
(please print)



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 _____



Exhibit A

(Exhibit on Following Page)

EXHIBIT A

The Contractor may perform one or more of the following tasks at the direction of the Director or Director's designee.

- **Due Diligence Activities:**

- Obtain and/or review title commitments; document all relevant information on a parcel by parcel basis.
- Create and update preliminary acquisition schedule; update in accordance with requirements listed below.
- Obtain vesting deeds and/or legal descriptions as needed.
- Identify any existing conditions that may impact the cost, schedule or logistics of acquiring real estate interests for the project.

- **Activities Related to Land Acquisition and Relocation:**

- Attend project meetings; create and maintain detailed land acquisition and relocation schedule for each interest to be acquired; show progress relating to the estimated completion of each acquisition as it relates to established milestones within the land acquisition schedule.
- Coordinate all necessary tasks associated with the City, other governmental agencies, project engineers, project appraisers and other applicable agencies and/or persons involved in the Project.
- Provide Chief Engineers Cost Estimate to the Colorado Department of Transportation ("CDOT") if needed for the project; update estimate if needed.
- Coordinate Right of Way ("ROW") plan approval including obtaining all clearances and other approvals needed from CDOT and/or other applicable governing agencies if needed for the project.
- Attend Right of Way Plan Review (ROWPR) meetings as needed, if needed for the project; document content of topics discussed in each meeting and distribute content to all appropriate parties.
- Prepare from City templates, review and assist with the negotiations of all legal documents necessary for land acquisition and relocation activities. Documents may include Purchase and Sale Agreements, Deeds, Railroad Agreements, License Agreements and Permanent and/or Temporary Agreements.
- Work with City Agencies to prepare estimates for acquisitions and relocations.

- **Appraisal and Appraisal Review Activities:**

- Coordinate and hire appraisers in consultation with the City.
- Work directly with the appraiser(s) and property owner(s) to coordinate all due diligence activities so the appraisal(s) for each acquisition can be drafted in accordance with the guidelines as established by the CDOT appraisal manual or other applicable guidelines.
- Coordinate appraisal process with title work plans and legal descriptions.
- Coordinate all activities to obtain a Fair Market Value (“FMV”) Report for each acquisition, if applicable.
- Prepare value findings when appropriate.
- The City, in its sole discretion, shall either select and/or approve all of the appraisers for each particular project and such appraisers shall be subcontractors of the Contractor.

- **Acquisition:**

- Coordinate the preparation, negotiation, execution and delivery of all necessary documents including:
 - Notices of intent to acquire
 - Offer letters and summary of just compensation
 - Final offer letters
 - Last written offer letters
 - Land acquisition and relocation documents
- Conduct negotiations with each owner for the acquisition of the needed property rights in accordance with all applicable Federal, State and City and County of Denver rules, regulations, statutes, ordinances and Executive Orders.
- Provide property management duties.
- Obtain all required documentation to ensure a successful closing of interests in real estate including partial releases/subordinations and tax pro-rations.
- Coordinate and attend all real estate closings.
- Provide escrow services as needed

- **Relocation:**

- Complete Acquisition Stage Relocation Plan (7-B Study) of affected properties.
- Interview relocatees to determine special relocation needs.
- Search for availability of suitable replacement sites.
- Determine if relocation can be accomplished in the time frame given.
- Prepare Relocation Determinations, payments requests and settle claims for moving costs.
- Obtain at least two moving estimates from commercial movers: present list of approved moving benefits to each business and offer relocation assistance as needed.

- **Closing Matters:**

- Obtain and update all title commitments as needed.
- Obtain title insurance based upon property final settlement amount or as otherwise directed by the City.
- Secure all necessary releases and/or subordination documents and associated costs.
- Coordinate and manage all activities in order to conduct a successful real estate closing for all acquisitions.
- Create, maintain and submit comprehensive project files for each closing. Said file shall include all pertinent documents related to closing of the acquisition.

- **Escrow Services:**

- Set up escrow account, funded by the project, and administer all payments for each project as directed by the City.
- Create and maintain a master spreadsheet of all escrow account activity; submit to City representative no less than once per month.

- **Litigation Support:**

- Supporting the City Attorney's Office with condemnation cases and provide litigation support including coordination with the appraiser, negotiator, and expert witnesses; assist with exhibits.

Exhibit B

(Exhibit on Following Page)

RATES/PRICING APPENDIX

The rates and fees attached hereto are proprietary and are not to be disclosed to any person beyond those City and County of Denver officials and employees, who may otherwise review/approve such in the normal course of contracting. They are not to be disclosed pursuant to open records statutes.

2015 Rate Sheet							
Principal	Sr Project Mgr	Project Mgr	Sr. ROW Agent	R/W Agent III	R/W Agent II	R/W Agent I	
Due Diligence Activities:							
Obtain and review title commitments; document all relevant information on a parcel by parcel basis.	109.22	101.94	89.20	81.55	68.81	\$58.60	
Create preliminary acquisition schedule; update in accordance with requirements listed below.				81.55	68.81	\$58.60	
Obtain vesting deeds and/or legal descriptions as needed.	See Attached Title & Closing Rate Sheet.						
Identify any existing conditions that may impact the cost, schedule or logistics of acquiring real estate interests for the project.	121.35	109.22	89.20	81.55			
Activities Related to Land Acquisition and Relocation:							
Attend project meetings; create and maintain detailed land acquisition and relocation schedule for each interest to be acquired; show progress relating to the estimated completion of each acquisition as it relates to established milestones within the land acquisition schedule.	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
Coordinate all necessary tasks associated with the City, other governmental agencies, project engineers, project appraisers and other applicable agencies and/or persons involved in the Project.	121.35	109.22	101.94	89.20	81.55	68.81	
Provide Chief Engineers Cost Estimate to CDOT if needed for the project; update estimate if needed.	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
Coordinate Right of Way (ROW) plan approval including obtaining all clearances and other approvals needed from CDOT and/or other applicable governing agencies if needed for the project.	121.35	109.22	101.94	89.20			
Attend Right of Way Plan Review (ROWPR) meetings as needed, if needed for the project; document content of topics discussed in each meeting and distribute content to all appropriate parties.	121.35	109.22	101.94	89.20			

Prepare from City templates, review and assist with the negotiations of all legal documents necessary for land acquisition and relocation activities. Documents may include Purchase and Sale Agreements, Deeds, Railroad Agreements, License Agreements and Permanent and/or Temporary Agreements.	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
Work with City Agencies to prepare estimates for acquisitions and relocations	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
Appraisal and Appraisal Review Activities:							
Coordinate and hire appraisers on behalf of the City	121.35	109.22	101.94				
Work directly with the appraiser(s) and property owner(s) to coordinate all due diligence activities so the appraisal(s) for each acquisition can be drafted in accordance with the guidelines as established by the CDOT appraisal manual or other applicable guidelines.	121.35	109.22	101.94	89.20	81.55		
Coordinate appraisal process with title work plans and legal descriptions.		109.22	101.94	89.20	81.55	68.81	
Coordinate all activities to obtain a Fair Market Value (FMV) Report for each acquisition, if applicable.		109.22	101.94	89.20	81.55	68.81	
Prepare value findings when appropriate.		109.22	101.94	89.20	81.55	68.81	
The City, in its sole discretion, shall either select and/or approve all of the appraisers for each particular project and such appraisers shall be subcontractors of the firm(s) selected in accordance with this RFQ.	Charles Nelson \$125/hour - Appraisal Reports; \$150/hour for Litigation Support. Doug Nitskowski \$150/hour - Appraisal Reports; \$250/hour for Litigation Support.						
Acquisition							
Coordinate the preparation, negotiation, execution and delivery of all necessary documents including:	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
§ Notices of intent to acquire	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
§ Offer letters and summary of just compensation	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
§ Final offer letters	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
§ Last written offer letters	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
§ Land acquisition and relocation documents	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60

Conduct negotiations with each owner for the acquisition of the needed property rights in accordance with all applicable Federal, State and City and County of Denver laws.	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
Provide property management duties when necessary.	121.35	109.22	101.94	89.20	81.55	68.81	\$58.60
Obtain all required documentation to ensure a successful closing of interests in real estate including partial releases/subordinations and tax pro-rations.	See Attached Title & Closing Rate Sheet						
Coordinate and attend all real estate closings.		109.22	101.94	89.20	81.55	68.81	\$58.60
Provide escrow services as needed	As below.						
Relocation							
Complete Acquisition Stage Relocation Plan (7-B Study) of affected properties.		109.22	101.94	89.20	81.55	68.81	\$58.60
Interview relocatees to determine special relocation needs.		109.22	101.94	89.20	81.55	68.81	\$58.60
Search for availability of suitable replacement sites.		109.22	101.94	89.20	81.55	68.81	\$58.60
Determine if relocation can be accomplished in the time frame given.		109.22	101.94	89.20	81.55		
Prepare Relocation Determinations, payments requests and settle claims for moving costs.		109.22	101.94	89.20	81.55	68.81	\$58.60
Obtain at least two moving estimates from commercial movers: present list of approved moving benefits to each business and offer relocation assistance as needed.		109.22	101.94	89.20	81.55	68.81	\$58.60
Closing Matters							
Obtain and update all title commitments as needed.	Update just prior to closing is part of our Closing Fee - see attached Title and Closing Rate Sheet.						
Obtain title insurance based upon property final settlement amount or as otherwise directed by the City.	At Westcor Posted Rates						
Secure all necessary releases and/or subordination documents and associated costs.	See Attached Title & Closing Rate Sheet.						
Coordinate and manage all activities in order to conduct a successful real estate closing for all acquisitions.	Part of our Closing Fee - see attached Title and Closing Rate Sheet.						

Create, maintain and submit comprehensive project files for each closing. Said file shall include all pertinent documents related to closing of the acquisition.	Part of our Closing Fee - see attached Title and Closing Rate Sheet.				
<u>Escrow Services</u>					
Set up escrow account, funded by the project, and administer all payments for each project as directed by the City.	No charge.				
Create and maintain a master spreadsheet of all escrow account activity; submit to City representative no less than once per month.	No charge.				
<u>Litigation Support</u>					
Supporting the attorneys handling the condemnation cases and provide litigation support including coordination with the appraiser, negotiator, and expert witnesses; help create exhibits and other trial exhibits.	121.35	109.22	101.94	89.20	81

H.C. Peck & Associates, Inc.
Rate and Fee Schedule – 2015
Title and Closing Services

	Description	Unit	Rates/Fees
1	Title Policy per published Underwriter's Rates (Westcor Land Title Insurance Company)		
2	Title Commitments, which includes maximum 5 hours of research	Each	\$535.00
3	Extensive Research (Commitments) or Misc Title Research	Hour	\$108.00
4	Commitment Updates	Each	\$190.00
5	JParker Time - Specifically Requested Research/Curative	Hour	\$145.00
6	Obtaining Partial Releases of Deeds of Trust	Hour	\$108.00
7	Obtaining County Tax Prorations	Hour	\$108.00
8	Closing Fee (In house or Downtown)	Each	\$400.00
9	Tax Certificates	Each	\$32.50
10	Special Delivery	Each	\$32.50
11	Wire Transfers	Each	\$32.50
12	Recording Fees (when necessary)	At Cost	
13	Copies of Documents/Plats/Maps at Courthouse	At Cost	
14	Lender Charges for Partial Releases	At Cost	
15	Mileage (as applicable)	IRS Rate	
16	Use of Non-County Books/Indices - Research Expenses	At Cost	
17	Parking (as applicable)	At Cost	
18	Third Party (e.g., Kinko's, SKLD) copy charges	At Cost	

CERTIFICATE OF LIABILITY INSURANCE

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

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

Table with PRODUCER (Holmes Murphy -Colorado) and INSURED (H.C. Peck & Associates, Inc) information, and CONTACT NAME, PHONE, FAX, E-MAIL ADDRESS, and INSURER(S) AFFORDING COVERAGE (Hartford Casualty Insurance Com, Landmark American Insurance Co).

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

Main coverage table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include General Liability, Automobile Liability, Umbrella Liab, Workers Compensation and Employers' Liability, and Profess. Liab.

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

Project: Real Estate Services On-Call 2015 On-Call Contract Control Number FINAN-201523944-00

The following are Additional Insureds as respects General Liability and Excess Liability only if required by written contract and coverage applies only as respects ongoing operations performed by the Insured for the Additional Insureds. All coverage terms, conditions and exclusions of the policy apply.

(See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

City and County of Denver
Director of Real Estate
201 W Colfax ave, Dept 1010
Denver, CO 80202

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

AUTHORIZED REPRESENTATIVE

Handwritten signature of Daniel T. Keough

DESCRIPTIONS (Continued from Page 1)

Additional insured is included on automobile liability if required by written contract according to terms and conditions of the policy.

Additional Insureds: City and County of Denver, its elected and appointed officials, employees and volunteers

The General Liability coverage is Primary and Non-Contributory per the policy terms & conditions only if required by written contract.

The Workers' Compensation, Business Automobile and General Liability policies include a Waiver of Subrogation in favor of the Additional Insureds only if required by written contract.

have all your rights and duties under this Coverage Part.

e. Unnamed Subsidiary

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. Newly Acquired or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.
- (2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors of Land or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

- 1. Any "occurrence" which takes place after you cease to lease that land; or
- 2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- 1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- 2. Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations;
- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
 - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds under this provision is described in Section III – Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV – Commercial General Liability Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Most We will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or

- c. Persons or organizations making claims or bringing "suits".

2. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal and Advertising Injury Limit

Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Damage To Premises Rented To You Limit

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

7. Medical Expense Limit

Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

8. How Limits Apply To Additional Insureds

If you have agreed in a written contract or written agreement that another person or organization be

that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability;

(5) Property Damage to Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

(6) When You Are Added As An Additional Insured To Other Insurance

Any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization: BLANKET AS REQUIRED BY WRITTEN CONTRACT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

EXTENDED OPTIONS

1. Employers' Liability Insurance

Item 3.B. of the Information Page is replaced by the following:

B. Employers' Liability Insurance:

1. **Part Two** of the policy applies to work in each state listed in Item 3.A.

The Limits of Liability under Part Two are the higher of:

Bodily Injury by Accident	<u>\$500,000</u>	<u>Each Accident</u>
Bodily Injury by Disease	<u>\$500,000</u>	<u>Policy Limit</u>
Bodily Injury by Disease	<u>\$500,000</u>	<u>Each Employee</u>

OR

2. The amount shown in the Information Page.

This provision 1 of **EXTENDED OPTIONS** does not apply in New York because the Limits Of Our Liability are unlimited.

In this provision the limits are changed from **\$500,000** to **\$1,000,000** in California.

2. Unintentional Failure to Disclose Hazards

If you unintentionally should fail to disclose all existing hazards at the inception date of your policy, we shall not deny coverage under this policy because of such failure.

3. Waiver of Our Right To Recover From Others

- A. We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization for whom you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the agreement.

- B. This provision 3. does not apply in the states of Pennsylvania and Utah.

4. Foreign Voluntary Compensation and Employers' Liability Reimbursement

A. How This Reimbursement Applies

This reimbursement provision applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by an officer or employee.
2. The bodily injury must occur in the course of employment necessary or incidental to work in a country not listed in Exclusion C.1. of this provision.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The officer or employee's last exposure to those conditions of your employment must occur during the policy period.

B. We Will Reimburse

We will reimburse you for all amounts paid by you whether such amounts are:

1. voluntary payments for the benefits that would be required of you if you and your officers or employees were subject to any workers' compensation law of the state of hire of the individual employee.
2. sums to which Part Two (Employers' Liability Insurance) would apply if the Country of Employment were shown in Item 3.A. of the Information Page.

C. Exclusions

This insurance does not cover:

1. any occurrences in the United States, Canada, and any country or jurisdiction which is the subject of trade or economic sanctions imposed by the laws or regulations of the United States of America in effect as of the inception date of this policy.
2. any obligation imposed by a workers' compensation or occupational disease law, or similar law.
3. bodily injury intentionally caused or aggravated by you.