

## ON CALL DESIGN SERVICES AGREEMENT

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER** (the "City"), a municipal corporation of the State of Colorado, and **Toole Design Group, LLC** a Colorado Limited Liability Limited Partnership, whose mailing address is 8484 Georgia Avenue, Suite 800, Silver Spring, MD 20910 (the "Design Consultant"), collectively "the Parties".

### RECITALS:

1. The City, through its Department of Public Works, seeks "readily available" professional design services to support the department of Public Works and other divisions as necessary on an as needed basis; and

2. The Design Consultant represents that the Design Consultant has the present capacity and is experienced and qualified to perform such professional services for the City in connection with the planning, design and construction of various City projects, as specified in this Agreement; and

3. In response to the City's Request for Qualifications and Proposal, the Design Consultant has submitted a Proposal for such services to the City. The Design Consultant and the City have negotiated a Scope of Services for such professional services, a copy of which is attached hereto and incorporated herein as **Exhibit A**.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties hereto mutually agree as follows:

### SECTION 1 – ENGAGEMENT

1.01 Engagement. The City engages the Design Consultant with respect to the furnishing of professional design services on an on-call basis, as set forth in this Agreement. The Design Consultant accepts such engagement upon, subject to and in accordance with the terms, conditions and provisions of this Agreement.

1.02 Line of Authority for Contract Administration.

The City's Executive Director of Public Works ("Manager") is the City's representative responsible for authorizing and approving the work performed under this Agreement. The Manager hereby designates the Manager of Facilities Capital Projects Management as the Manager's authorized representative for the purpose of designating a Project Manager, for the purpose of issuing a written Notice to Proceed and for purposes of administering, coordinating and finally approving the work performed by the Design Consultant under this Agreement. The Project Manager shall be responsible for the day-to-day administration, coordination and approval of work performed by the Design Consultant, except for approvals which are specifically identified in this Agreement as requiring the Manager's approval. The Manager expressly reserves the right to designate another authorized representative to perform on the Manager's behalf by written notice to the Design Consultant.

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

1.04 Scope of Design Consultant's Authority. The Design Consultant shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. The Design Consultant is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. The Design Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

## **SECTION 2 – DESIGN CONSULTANT'S SERVICES**

2.01 General. The Design Consultant shall provide professional design services for any assigned project, on an as-needed basis, in accordance with the terms and conditions of this Agreement.

### 2.02 Professional Responsibility; Project Requirements.

- (a) All of the work performed by the Design Consultant under this Agreement shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform work of a nature similar to the Work described in this Agreement.
- (b) The Design Consultant agrees to strictly conform to and be bound by written standards, criteria, budgetary considerations and memoranda of policy furnished to it by the City and further agrees to design each project in compliance with applicable laws, statues, codes, ordinances, rules and regulations, and industry standards.
- (c) All professional services, plans and specifications and other work, or deliverables provided under this Agreement for the Project shall be adequate and sufficient for the proper construction of the Project and its intended purpose.
- (d) All drawings, specifications and other products shall be prepared so the Project, when constructed in accordance with such drawings and specifications, is in compliance with all applicable laws, statutes, codes, ordinances, rules and regulations and executive orders of the City, the State and the Federal government.
- (e) Any design changes required by changes in such applicable laws, statutes, codes, ordinances or rules and regulations of the City, the state or the federal government, which are enacted after the City's acceptance of Construction Documents, defined herein, will be outside the scope of the Design Consultant's basic services and basic fee, and will be compensated for approval as an additional service, subject to the additional services budget for that project.
- (f) The Design Consultant shall prepare the plans, specifications and other projects for each project in a format that complies with all City requirements as well as all state and federal requirements for that project. No funds will be paid to the Design Consultant for the preparation of contract documents in a form other than that considered usual and customary by the City's Department of Public Works, Facilities Capital

Projects Management. It shall be the responsibility of the Design Consultant to contact the reviewing agencies and determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though any responsible federal and state agencies have approved such documents.

- (g) Without limiting the foregoing, unless it is specifically directed otherwise in writing by the Deputy Manager, the Design Consultant shall comply with the CAD Standards Guide for the final deliverable Record Documents. Final payment will be held until the receipt of the Record Documents.
- (h) The City reserves the right to proceed with the construction of each project using either the City's standard general contractor bidding approach, on call contractors or using construction management techniques. The Design Consultant agrees to organize its Contract Documents for either construction technique and to coordinate the construction documents into selected bid packages, as appropriate. The City will notify the Design Consultant prior to the completion of the Preliminary Design Phase which method will be used and the amount of work or the limits of construction to be included in the proposed bid package(s).
- (i) The reports, studies, drawings and specifications and other products prepared by the Design Consultant under this Agreement, when submitted by the Design Consultant to the Manager and the user agency for any identified phase of a project, must represent a thorough study and competent solution for the project as per usual and customary professional standards and shall reflect all architectural and engineering skills applicable to that phase of the project.
- (j) The responsibilities and obligations of the Design Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant or subconsultant, or an employee of the City.
- (k) The Design Consultant shall provide all professional services required by the City in defending all claims against the City which relate in any way to alleged default hereunder, errors or omissions of the Design Consultant or its subconsultants, without additional compensation.

2.03 Program and Budget.

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

- (b) The term "Project Construction Cost" shall mean the estimated cost to the City of actually constructing an assigned project, but such cost shall not include any Design Consultant's or special consultant's fees or reimbursements or the cost of equipment installed by the City under separate contract, unless the Design Consultant is required by the City to prepare drawings and specifications for such equipment. The initial Project Construction Cost for the project to which the Design Consultant is assigned shall be provided to the Design Consultant at the time the Design Consultant prepares its proposal for that project. Such cost shall be subject to increase or decrease at the sole option of the Manager.
- (c) If the City requires the Design Consultant to prepare a formal cost estimate for a particular project, the Design Consultant agrees to design the project within the projects' estimated Project Construction Cost. Should all responsive bids or proposals received for the project work provided for in the design exceed such cost, the Design Consultant agrees to redesign the Project at no additional cost to City and, in a manner acceptable to the City.

2.04 Coordination and Cooperation.

- (a) The Design Consultant agrees to perform under this Agreement in such a manner and at such times that the City or any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.
- (b) Coordination with the City and other involved agencies shall be a continuing work item through all phases of each assigned project. Such coordination shall consist of regular progress and review meetings with the City, work sessions with Facilities Capital Projects Management of Public Works and user agencies, or as otherwise directed by the City. Such coordination may also include field and office reviews of plans and documents as required during the development of the design for any specific project. The Design Consultant shall document all such conferences and distribute notes to the City.

2.05 Personnel Assignments.

- (a) The key professional personnel identified in **Exhibit B** will be assigned by the Design Consultant or its subconsultants to perform the services required under this Agreement, as appropriate.
- (b) The Design Consultant's services shall be diligently performed by the regular professional and technical staff of the Design Consultant. In the event the Design Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with City approval, by practicing professional consultants outside of the employ of the Design Consultant.
- (c) The Design Consultant agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to through outside subconsultants, professional design personnel and technicians in sufficient

strength to meet the requirements of the City. Such personnel and technicians shall be of the classifications referenced in **Exhibit B**. The hourly rates specified therein include all costs except those specifically referenced as reimbursables in the appropriate hourly rate schedule.

- (d) Prior to designating an outside professional to perform subconsultant work, the Design Consultant shall submit the name of such subconsultant, together with a resume of training and experience in work of like character and magnitude of the project being contemplated, to the City and receive prior approval in writing.
- (e) It is the intent of the Parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that the Design Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.
- (f) If the Design Consultant or a subconsultant decides to replace any of its key professional personnel, the Design Consultant shall notify the Manager in writing of the desired change. No such changes shall be made until replacement personnel are recommended by the Design Consultant and approved in writing by the Manager, which approval shall not be unreasonably withheld.
- (g) If, during the term of this Agreement, the Manager determines that the performance of approved key personnel or a subconsultant is not acceptable, she shall notify the Design Consultant and give the Design Consultant the time which the Manager considers reasonable to correct such performance. Thereafter, she may require the Design Consultant to reassign or replace such key personnel. If the Manager notifies the Design Consultant that certain of its key personnel or a subconsultant should be replaced, Design Consultant will use its best efforts to replace such key personnel or a subconsultant within ten (10) days from the date of the Manager's notice.
- (h) Neither the Design Consultant nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on a project to which they may be assigned, and the Design Consultant shall make written inquiry of all of its subconsultants concerning the existence of a potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.
- (i) Actions taken by the City under this Article shall not relieve the Design Consultant of its responsibility for contractual or professional deficiencies, errors or omissions.

- (j) The Design Consultant shall submit to the Manager a list of any additional key professional personnel who will perform work under this Agreement within thirty (30) days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks which may be assigned. Such additional personnel must be recommended by the Design Consultant and approved by the Manager before they are assigned to a specific project.
- (k) The Manager shall respond to the Design Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the Manager receives the list of changes. If the Manager or his designated representative does not respond within that time, the changes shall be deemed to be approved.

2.06 Basic Services – General.

- (a) The Design Consultant shall, under the general direction of and at the written request of the Manager, furnish experienced architectural personnel to support the Department's existing personnel. Subject to an express, agreed upon limitation of such duties set forth in any approved project proposal for the particular project assigned to the Design Consultant under this Agreement, the Design Consultant agrees to perform all of the services and duties set forth in this Agreement in regard to each project to which it is assigned and its proposal is approved.
- (b) When directed by the Manager to perform under this Agreement on a particular project, the Design Consultant shall prepare a project specific proposal in accordance with the provided scope or description of Work for that project. A separate project specific proposal shall be prepared for each project for which the Design Consultant's services are required and shall set forth, at a minimum all of the following:
  - (1) The maximum fee for the Design Consultant's basic services.
  - (2) The additional services budget, if any, for the Project.
  - (3) The budget for reimbursable expenses if applicable.
  - (4) A description of the project and requested scope of work (the "Work").
  - (5) An agreed upon schedule for the Design Consultant's performance.
  - (6) A lump sum maximum price for all of the Design Consultant's Work.
  - (7) An Itemized Hourly Estimate per the Key Personnel and Rate Schedule in **Exhibit B**, unless waived by the Manager.
- (c) Upon approval by the Manager of a project proposal, the approval and appropriation of funding for such project, and the issuance of a written Notice to Proceed, the Design Consultant shall proceed to perform required Work.

- (d) The assigned Work shall be performed in conformance with the approved project specific proposal upon approval of the Proposal.
- (e) The Design Consultant's basic services for each project to which it is assigned may consist of any one or combination of the phases described below and shall include, but are not limited to the architectural, civil, structural, mechanical and electrical services appropriate to each phase of each project and the services described in **Exhibit A**.
- (f) The Design Consultant shall obtain written authorization from the City before proceeding with each phase of each assigned project.
- (g) Nothing in this Agreement shall be construed as placing any obligation on City to proceed with any phase beyond the latest phase authorized in writing by City for each assigned project. Further, nothing in this Agreement shall be construed as guaranteeing the Design Consultant any minimum amount of Work or number of projects assigned under this Agreement.
- (h) If a project which is assigned to the Design Consultant under this Agreement is funded in whole or part by federal funds, each of the applicable terms set forth in any funding arrangement for such funds shall be, and by this reference is incorporated into the project specific proposal for such project, and included in the Design Consultant's basic services responsibilities for such project.
- (i) The responsibilities and obligations of the Design Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant, subconsultant, or employee of the City.

2.07 Basic Services - Phase Specific. All of the services described in this Section 2.07, unless specifically noted as omitted in the project specific proposal for a specific project, are included in the Design Consultant Basic Fee for each project to which the Design Consultant is assigned.

- (a) Programming and Investigation Phase:
  - (1) The Design Consultant shall attend such conferences as may be required for a complete understanding of each project, and the Design Consultant shall document all such conference notices and distribute minutes of such conferences to the City.
  - (2) If construction, design or document standards have been adopted by the City, the State, or the Federal Government for the Project, the Design Consultant shall comply with all such standards when applicable.
  - (3) The Design Consultant shall perform all additional research or investigation it deems necessary to a complete understanding of the project.

- (4) The Design Consultant shall review the needs and requirements of the City and affected agencies to determine the specific requirements of the specific project based on the information provided by the City.
- (5) The Design Consultant shall then review the project requirements with the City to confirm its understanding of the project program, budget and any applicable limitations.
- (6) The Design Consultant shall review and coordinate with all plats, special studies and engineering data necessary to properly investigate and report on the project.
- (7) The Design Consultant shall then, through a written report and informal presentation, review with the City alternate methods or approaches to the design and construction of the project and recommend those methods or approaches best suited to program needs and budget of City.
- (8) The Design Consultant shall also include as part of this phase all services included in the applicable portions of the applicable approved project specific Proposal.

(b) Schematic Design Phase:

- (1) The Design Consultant shall not begin work on the Schematic Design Phase of any project unless and until written notice to proceed with such phase is received from the Project Manager.
- (2) During the Schematic Design Phase for each project, the Design Consultant shall, in response to the City's requirements, the budget restrictions of the project and the format of design and construction selected by City, prepare for the City's approval schematic design documents including, but not limited to, drawings and other documents demonstrating and illustrating the scope and scale of the project and the relationship of the project components. Such documents shall be in sufficient detail so as to allow the City to make knowledgeable and informed decisions as to the selection of alternates and resolution of other scope and budget questions.
- (3) The Design Consultant shall also provide a preliminary Statement of Probable Construction Cost of the project for the City, taking into account the City's project budget prior to payment for this phase of the work.
- (4) The Design Consultant shall also include as part of this phase all services included in the applicable portions of the applicable approved project specific Proposal.



(c) Design Development Phase:

- (1) Prior to beginning the Design Development Phase of each project, the Design Consultant shall obtain written approval of its final Schematic Design Documents and the Statement of Probable Cost.
- (2) The Design Consultant shall prepare Design Development Documents based upon the approved schematic design documents and any adjustments in the program and budget authorized by the Manager.
- (3) The Design Development Documents shall include but not be limited to sufficient data, information and material to define the scope of the project and to demonstrate the general design of the project, including the size and character of the project as to architectural, structural, mechanical and electrical systems, materials, and any other project elements appropriate under each project scope and design.
- (4) As required, the Design Consultant shall prepare Design Development drawings which shall include but not be limited to:
  - (i) Drawings which show existing topographic features and improvements affecting or relating to the proposed project. The Design Consultant shall indicate revisions to be made to existing topographic features and improvements such as grading and construction of drainage facilities. Where drainage facilities are to be provided, the Design Consultant shall indicate direction of flow and point of discharge by appropriate symbol or notes.
  - (ii) Drawings setting forth the basic information necessary to establish space requirements and functional arrangement.
  - (iii) Drawings which demonstrate the functional layout of mechanical, electrical and electronic features, special equipment and, plumbing and heating, where applicable.
  - (iv) Drawings demonstrating the location, dimension, sections, areas and capacities applicable to parking areas, access roads, driveways, walks, and similar features.
  - (v) Drawings demonstrating the location and size of existing or proposed storm or sanitary sewers, water mains, gas main and electrical services as needed for the construction of the project, as well as elevations of gravity lines and location of proposed building connections with notations showing which of which of the necessary utility extensions or connections will be provided by others.

- (vi) Drawings showing simplified schematic electrical diagrams for each electronic or instrumentation system for any required system functions.
  - (5) The Design Consultant shall also prepare preliminary specifications which shall include but not be limited to a proposed project time schedule.
  - (6) The Design Consultant shall then prepare a Statement of Probable Construction Cost which shall be calculated by the Design Consultant to a uniform and detailed level, based on the drawings and the preliminary specifications for this phase of the project, reflecting the probable project construction costs and taking into account the building trades and construction components utilized in the project design.
  - (7) The Design Consultant shall also provide, as part of this phase, all services included in the applicable portions of the applicable approved project specific Proposal.
  - (8) The Design Consultant shall also provide outline specifications that include the use of LEED standards and contractor requirements for recycling and construction waste management.
- (d) Construction Documents Phase:
- (1) Prior to beginning the Construction Documents Phase, the Design Consultant shall obtain acceptance in writing of the Design Development Documents and the accompanying Statement of Probable Construction Cost. Upon acceptance by the City, in writing, of the Statement of Probable Construction Cost, such statement shall become the City's Final Budget for Project Construction. Acceptance of the Design Development Documents shall not be construed as approval of the adequacy of the Design Development Documents and shall not relieve the Design Consultant of any liability for any defaults, deficiencies, errors or omissions contained therein.
  - (2) The Design Consultant shall prepare the Construction Documents from the approved Design Development Documents and by incorporation of any further changes authorized by the City and agreed to by the Design Consultant. The Construction Documents shall set forth in detail the requirements for the completion of the entire project. At a minimum, these documents must include complete information necessary to bid the project, and shall contain complete bidding documents meeting all City and, as applicable, State and Federal requirements.
  - (3) The Construction Documents shall include, but not be limited to, complete drawings and specifications, compliant with the City's Construction General Conditions, setting forth the requirements for

the completion of the project in adequate, reasonable, reliable and final detail.

- (4) The Design Consultant shall file all documents necessary and required for the approval of the project design by governmental authorities having jurisdiction over the project. The City will lend any required assistance, such as signing application(s) and paying any permit or other fees.
  - (5) Acceptance of the Construction Documents shall not relieve the Design Consultant of any responsibility for design deficiencies, omissions or errors.
  - (6) All final plans and specifications shall bear the signature(s) and seal(s) of Design Consultant and/or the responsible subconsultant, in conformity with the requirements of Articles 4 and 25 of title 12, C.R.S. It is intended by the parties that the Construction Documents, including all plans and specifications, will be signed and sealed, in whole or in part as appropriate, by the licensed professional engineer and/or architect in responsible charge of the preparation of such plans and specifications or parts thereof. The Design Consultant shall be ultimately responsible for all design work provided under this Agreement.
  - (7) The Design Consultant shall make available for review, by the City, all design data forming the basis for drawings and specifications.
  - (8) The Design Consultant shall provide a list of long lead items to the Project Manager.
  - (9) The Design Consultant shall provide the City with a Final Statement of Construction Cost based upon the submitted Design Documents for the City's consideration.
  - (10) The Design Consultant shall also include as part of this phase all services included in the applicable portions of the applicable approved project specific Proposal.
  - (11) If the Cost estimate indicates a budget shortfall, the Design Consultant shall assist the City by identifying items that could be bid as add alternates and identifying those items on the construction documents.
- (e) Bidding Phase:
- (1) Prior to beginning the Bidding Phase of the project, the Design Consultant shall obtain the City's acceptance, in writing, of the Construction Documents. Such acceptance shall not be construed as approval of the adequacy of the Construction Documents.

- (2) The time schedule for work under this phase shall be governed by the times shown in the printed project bid package(s), as modified by any addenda.
- (3) During this phase, the Design Consultant's duties shall include, but not be limited to:
  - (i) Preparing and submitting the project documents, bid documents for the written acceptance of City prior to the advertising by the City and solicitation of bids. Such acceptance shall not be construed as approval of the adequacy of the documents and shall not relieve the Design Consultant of the responsibility for design deficiencies, errors, or omissions;
  - (ii) Preparation and submittal to the City of a tentative pre-bid project schedule, in a form approved by the City, in sufficient detail to show the major completion milestones required by the City, and appropriate to the size, complexity and scope of the project;
  - (iii) Providing the City with bid documents in accordance with the format required by the City;
  - (iv) Assist the Project Manager with answering questions by bidders and approving "equals" to specified materials. Lists of those materials approved as equals shall be prepared as an addendum item, with explanatory notes if necessary;
  - (v) Assist the Project Manager with the preparation of any necessary addenda;
  - (vi) Participating in the pre-bid conference with prospective bidders;
  - (vii) Reviewing all bids for the reasonableness of the bid price and the qualifications of the lowest responsive bidders; and
  - (viii) Performing all services included in the applicable portions of the applicable approved project specific Proposal.
- (4) Value Engineering: The Design consultant will lead the exercise to reduce costs by preparing a list of substitutions that can be accepted by the City to bring the project back into budget if there is a budget shortfall.
- (f) Construction Administration Phase:
  - (1) The Construction Administration Phase shall commence with execution of the Construction Contract(s) and the issuance of the

Notice to Proceed to the Project Contractor(s), or the first of them, by the City.

- (2) The time schedule for Design Consultant's Work under this phase shall be set and governed by the approved project schedule. However, the Design Consultant's schedule for this phase may be changed due to project change orders or due to time extensions to such schedule, and will in any event be extended until all project documents (original and record drawings, specifications, test reports, surveying notes, design calculations and other pertinent information) have been received by the City and the final payment for services is paid.
- (3) The Design Consultant shall assist at a pre-construction conference with the Contractor and shall take and distribute to the City and the Contractor written minutes of the pre-construction conference and of all meetings conducted.
- (4) The Design Consultant shall take written minutes of all project meetings and shall distribute such minutes to the City for review within five (5) days.
- (5) The Design Consultant shall attend Owner, Architects, Contractor (OAC) meetings when requested by the Project Manager. The Design Consultant maybe be called upon to assist with procedures, job progress, construction problems, scheduling or other matters relating to the timely and successful completion of the project in accordance with the contract requirements.
- (6) When requested by the Project Manager, the Design Consultant shall keep the City informed through a monthly written report of the progress and quality of work.
- (7) If, in the Design Consultant's opinion, the Contractor has fallen behind schedule, the Design Consultant shall immediately notify the City Project Manager. If the Contractor refuses or fails to prosecute the work, or any part thereof, with such diligence as will insure its completion within the time specified in the Contract Documents, or any extension thereof, or fails to complete said work within such time, or refuses to correct defective work, the Design Consultant shall immediately notify the City Project Manager and recommend a course of action.
- (8) The Design Consultant will assist the City Project Manager with interpreting the requirements of the Project Plans and Specifications. The Design Consultant will render written interpretations within ten (10) days of receipt of any written request or within an agreed upon time limit.
- (9) The Design Consultant shall notify the City's Project Manager of unacceptable work which, in the Design Consultant's opinion, does

not conform to the Contract Documents. The Design Consultant shall review and approve all shop drawings, samples and other required submissions of the Contractor in a timely manner. Such general submissions shall be approved for use on the project only if, and when, the Design Consultant has ascertained that they are in conformance with the design concept of the project and in compliance with contract documents. Submissions of Contractor(s) shall be acted on and returned to the Contractor within ten (10) days of receipt thereof. If review and return are delayed beyond the time set out above, the Design Consultant shall notify Contractor and City of such delay, in writing, before expiration of the approval date, stating the reason for the delay. Resubmittals shall be acted on and returned to Contractor within five (5) days. The Contractor shall submit to the City Project Manager and Design Consultant prior to the beginning of construction, a schedule of submittals. No shop drawing or submittal will be approved prior to the receipt of the submittal schedule.

- (10) The Design Consultant shall review and analyze all written requests for Change Orders, including any documents offered to substantiate such requests. The Design Consultant shall submit written recommendations to the City concerning all requests for Change Orders.
- (11) All change orders shall be on forms supplied by the City. The Design Consultant shall keep a current record of all variations or departures from the drawings and specifications as originally approved and shall maintain careful supervision over all changes in final drawings in the course of the work.
- (12) The City will transmit a copy of all completed change orders to the Design Consultant for use in checking shop drawings and compiling record drawings for project construction.
- (13) The Design Consultant shall use reasonable efforts and professional judgement to ensure that no changes are made in the work, by any party, without prior written consent of the City except as hereinafter provided. Only the City may authorize changes in the work.
- (14) The Design Consultant shall observe and systematically review the performance of the work or in such a manner and at such times as is necessary to determine that the work has been or is being installed in conformance with the Contract Documents. If any work is not in conformance with the Contract Documents, the Design Consultant shall immediately make an oral report of such nonconformance to the City Project Manager, followed by a written report of such nonconformance to both the nonconforming Contractor and the City. The Design Consultant, however, does not assume and is not responsible for any of the Contractor's construction means, methods, techniques, or safety programs in constructing the project. The on-site visits by the Design Consultant

shall be made by members of the appropriate engineering or architectural discipline according to the status of the work and may vary with the progress of work from daily to weekly. The frequency of on-site visits shall be that which the Project Manager considers necessary to safeguard the interests of the City through a determination that the Work is being performed in compliance with the Contract Documents, and with applicable laws, statutes, codes, ordinances, rules and regulations and standards.

- (15) On each visit to the site, the Design Consultant shall make, and file within seven (7) days with the City, a written field observation report detailing their observations.
- (16) If the Design Consultant knows or reasonably should have known that the Contractor or any subcontractor fail to comply with the Contract Documents, drawings, specifications, designs and plans prepared by the Design Consultant, the Design Consultant shall report such failure to the City's project manager immediately. The Design Consultant shall notify the Project Manager of specific critical observations it intends to carry out during the various phases of the project.
- (17) If the Design Consultant becomes aware of any condition or event constituting a material default by the Contractor or that otherwise justify termination of a Contractor for cause, the Design Consultant shall notify the City immediately.
- (18) Upon the completion of the entire work or a designated portion thereof, the Design Consultant shall, in consultation with the City, recommend issuance of a Certificate of Substantial Completion in accordance with the provisions of the construction contract and its General and/or Special Contract Conditions. The referenced document will be issued by the City.
- (19) The Design Consultant shall, in consultation with the City, provide to the City a close-out program, including a comprehensive process to ensure timely, efficient and proper completion of all punch list items by the Contractor in accordance with the provisions of the Contract Documents.
- (20) Prior to Final Inspection, the Design Consultant shall obtain the original "Marked-up As Built" drawings and a conformed copy of the Project Specifications from each Contractor. Based on these documents, the Design Consultant shall prepare, as necessary, and deliver to the Project Manager Record Drawings and a conformed copy of the Project Specifications showing all changes made during construction. Such Record Drawings shall reflect all known modifications to the original drawings and shall be made from the "Marked-up As Built" sets of drawings prepared by Contractor. The Record Drawings shall incorporate the Design Consultant's observations, shall be made in a professional manner and shall be

stamped and signed by the Design Consultant as being Record Drawings. These drawings shall be delivered on a CD in PDF and DWG format to the City Project Manager, together with all of the "Marked-up As Built" prints provided by the Contractor(s) from which they were derived. If requested by the City, the unstamped reproducible shall be transmitted to the City with a letter, sealed by the Design Consultant, stating that as of the date of such transmittal, the reproducible drawings are identical to the Record Drawings except for such seals and stamping. The last five percent (5%) of the Design Consultant's basic services fee for each project will not be paid until such Record Drawings and all Record Documents required are received.

- (21) When requested, the Design Consultant shall attend the Final Inspection with the City to ascertain that all work performed by the Contractor has been performed in accordance with the Contract Documents. At the time of such Final Inspection, a final punch list shall be agreed to by the Design Consultant and the City, and made in sufficient detail to fully outline to the Contractor: (1) any work to be completed; (2) any work not in compliance with the drawings or specifications; and (3) any unsatisfactory work.
- (22) Prior to final payment to the Contractor, the Design Consultant shall review final punch list work and shall prepare a written report outlining the deficient or outstanding work and making recommendations as to the ultimate disposition of such outstanding Work.
- (23) One month prior to the expiration of the warranty or other correction of work period provided for in the General and/or Special Contract Conditions to the Contract Documents, the Design Consultant shall inspect the project for any deficiencies that may have become apparent. Upon completion of such inspection, a written report of the inspection shall be furnished by the Design Consultant to the City.
- (24) The Design Consultant shall also include as part of this phase all services included in the applicable portions of the applicable approved project specific Proposal.

2.08 Surveying and Testing.

- (a) The Design Consultant and its appropriate subconsultant shall review all survey and test results reports and shall follow the recommendation of the soils engineer or other subconsultant unless, in the exercise of appropriate professional judgment, the Design Consultant or appropriate subconsultant discovers, or should in the exercise of professional judgment discover, factors indicating the report or results are not reliable.
- (b) If any such inadequacy or any inconsistency, based upon such exercise of professional judgment, is noted the Design Consultant and/or its



appropriate subconsultant shall report such inconsistency or inadequacy promptly of the City such that any inadequacy or inconsistency can be addressed by the soils engineer, testing laboratory or land surveyor before any further use is put to the data.

- (c) It is understood and agreed that this Agreement does not include the investigation, sampling, testing, planning, abatement design, and remediation management of asbestos or other hazardous waste material. Should the presence of asbestos or other hazardous waste material be known to exist on a specific project or if the Design Consultant shall observe the presence of asbestos or hazardous waste material on any project site during its performance of services under this Agreement, the Design Consultant shall notify the City in writing immediately.

2.09 Compliance with M/WBE Requirements.

- (a) This Agreement is subject to all applicable provisions of Divisions 1 and 3 of Article III, of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 to 28-36 and 28-52 to 28-90 D.R.M.C. and referred to in this Contract as the “M/WBE Ordinance.” Without limiting the general applicability of the foregoing, the (Contractor/ Consultant) acknowledges its continuing duty, pursuant to Sections 28-72, 28-73, and 28-75 of the D.R.M.C., to maintain throughout the duration of this Contract, compliance with the **16% M/WBE** participation commitment, upon which the City approved the award of this Contract to the Consultant and the Consultant further acknowledges that failure to maintain such participation commitments or otherwise comply with the requirements of the M/WBE Ordinance shall subject the Design Consultant to sanctions in accordance with Section 28-77 of the D.R.M.C. Nothing contained in this provision or in the M/WBE Ordinance shall negate the City’s right to prior approval of subcontractors, or substitutes therefore, under this Contract.

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

The City shall compensate the Design Consultant for its services performed and expenses incurred under this Agreement as follows.

3.01 Basic Services. The City agrees to pay the Design Consultant, as compensation for any basic services rendered for a particular Project, either a maximum basic services fee, to be set forth in each approved Project proposal prepared prior to commencement of any work under this Agreement, or an amount based on the Design Consultant's periodic invoices, whichever is less.

3.02 Reimbursable Expenses. Unless expressly authorized by the City as part of any approved project proposal, the City will not compensate the Design Consultant for expenses such as postage, travel, mileage (if the project is within the City and County of Denver boundary), telephone, reproduction and messenger service costs incurred in connection with Work performed under this Agreement. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproducible, etc. are not included in the hourly

rates, and will be itemized as part of each on-call work order as a not-to-exceed reproducible expense.

3.03 Additional Services. The Design Consultant shall be compensated for any additional services pre-approved in writing for any assigned project, subject to the terms and conditions set forth herein and an additional services budget limits for that specific project.

3.04 Invoices. The Design Consultant shall invoice and be paid monthly in proportion to the progress of the Work on each assigned project. Such invoices shall reflect the Design Consultant's actual hours, rates, personnel, sub-consultant costs and reimbursable costs, and shall be based on the hourly rates or other rates for services contained in **Exhibit B**. The Design Consultant shall maintain hourly records of the time worked by its personnel and subconsultants, records of all allowable reimbursable expenses, and records of expendable supplies and services as necessary to support any audits by the City, and shall bill the City monthly for fees and costs accrued during the preceding month. The Design Consultant's invoice shall be separated as necessary to show direct charges to specific projects and to distinguish fees and expenses. Upon submission of such invoices to the City, and approval by the City, payment shall issue. Final payment to the Design Consultant, for each assigned project, shall not be made until after the project is accepted, all guarantees, certificates of completion, and record drawings and reproducible copies are delivered to the City, and the duties agreed to in the approved project proposal for that project are otherwise fully performed by the Design Consultant. No deductions shall be made from the Design Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to any assigned project contractor.

3.05 Maximum Contract Amount; Funding.

- (a) It is understood and agreed by the parties hereto that payment or reimbursement of all kinds to the Design Consultant, for all Work performed under this Agreement, shall not exceed a maximum of **THREE MILLION DOLLARS (\$3,000,000.00)**. In no event shall the maximum payment to the Design Consultant, for all work and services performed throughout the entire term of this Agreement exceed the contract maximum amount set forth above.
- (b) Notwithstanding any other term, provision, or condition herein, all payment obligations under this Agreement shall be limited to the funds duly and lawfully appropriated and encumbered or otherwise made available by the Denver City Council for the particular projects assigned to the Design Consultant under this Agreement for the particular year(s) in which this Agreement is in effect and paid into the Treasury of the City. As of the date of this Agreement, no funds have been appropriated for this Agreement. Instead, it is the City's intent to appropriate the funds necessary to compensate the Design Consultant for the work it performs on any assigned project, at the time it accepts each proposal for a specific project. The Manager of Public Works, upon reasonable written request, will advise the Design Consultant in writing of the total amount of appropriated and encumbered funds which are or remain available for payment for all work by the Design Consultant on a specific project.
- (c) The issuance of any form of order or directive by the City which would cause the aggregate amount payable to the Design Consultant for a specific

project to exceed the amount appropriated for the Design Consultant's work on a specific project is expressly prohibited. In no event shall the issuance of any change order or other form of order or directive by the City be considered valid or binding if it requires additional compensable work to be performed, which work will cause the aggregate amount payable for such work to exceed the amount appropriated and encumbered, unless and until such time as the Design Consultant has been advised in writing by the Manager of Public Works that a lawful appropriation sufficient to cover the entire cost of such additional work, has been made. It shall be the responsibility of the Design Consultant to verify that the amounts already appropriated for the Design Consultant's Work on a project are sufficient to cover the entire cost of such Work, and any work undertaken or performed in excess of the amount appropriated is undertaken or performed in violation of the terms of this Agreement, without the proper authorization for such work, and at the Design Consultant's own risk and sole expense.

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

4.01 Term. The initial term of this Agreement shall commence upon execution and shall end **October 31, 2022**; provided, however, that any work in progress that was initiated during the term of this Agreement shall continue and be paid for hereunder until the completion thereof. All terms and conditions of the Agreement shall remain in full force and effect until such completion. The term may be extended, at the sole option of the City by written amendment pursuant to Executive Order 8. In no event, however, shall the Design Consultant's performance under this Agreement, including any extension, exceed a five (5) year period ending on month and day of the execution of this Agreement. In addition, nothing contained herein shall obligate the City to extend the Agreement beyond the initial term.

#### 4.02 Termination.

- (a) Nothing herein shall be construed as giving the Design Consultant the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the Manager.
- (b) The Manager may terminate this Agreement for cause at any time if the Design Consultant's services become unsatisfactory, in the sole discretion of the Manager. The City shall have the sole discretion to permit the Design Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.
- (c) In the event of a termination for cause, or in the event the Design Consultant becomes unable to serve under this Agreement, the City may take over work to be done under this Agreement and prosecute the work to the completion by contract or otherwise, and the Design Consultant shall be liable to City for all reasonable cost in excess of what the City would have paid the Design Consultant had there been no termination for cause.
- (d) The City may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) days' prior written notice to the Design

Consultant, which notice shall state the date of cancellation and termination.

- (e) If the Design Consultant's services are terminated, postponed or revised, or if the Design Consultant shall be discharged before all the work and services contemplated have been completed, or if the project is, for any reason, stopped or discontinued, the Design Consultant shall be paid only for the portion of work or services which has been satisfactorily completed at the time of such dismissal, termination, cancellation, postponement, revision or stoppage.
- (f) All drawings, specifications, and other documents relating to the design or administration of work completed or partially completed shall be delivered by the Design Consultant to the City in the event of any dismissal, termination, cancellation, postponement, revision or stoppage.
- (g) In the event of any dismissal, termination, cancellation, postponement, revision or stoppage, the Design Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, delivery of drawings, specifications, and other documents referred to herein, and assisting the City during a transition to another Design Consultant, if applicable.

## **SECTION 5 – GENERAL PROVISIONS**

### 5.01 City's Responsibilities.

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

### 5.02 Ownership of Documents.

- (a) The City shall have title and all intellectual and other property rights, in and to all phased and final Design documents, and all data used in the development of the same, including the results of any tests, surveys or inspections at each project site, and all photographs, drawings, drafts, studies, estimates, reports, models, notes and any other materials or work products, whether in electronic or hard copy format, created by the Design Consultant pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the "Documents"), whether the project for which the Documents were created is executed or not. The

Consultant shall identify and disclose, as requested, all such Documents to the City.

- (b) To the extent permitted by the U.S. Copyright Act, 17 USC § 101 et seq., as the same may be amended from time to time, the Documents are a “work made for hire,” and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a “work made for hire,” the Design Consultant hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.
- (c) The Design Consultant shall provide (and cause its employees and subcontractors to provide) all assistance reasonably requested in securing for the City’s benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City’s name, all rights to such Documents.
- (d) The Design Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder.
- (e) The Design Consultant shall be permitted to retain reproducible copies of all of the Documents for the information and reference, and the originals of all of the Documents, including all CAD disks, shall be delivered to the City promptly upon completion thereof, or if authorized by the City’s Project Manager, upon termination or expiration of this Agreement.
- (f) If the City reuses Design Documents prepared by the Design Consultant other than for their intended use or at a new location without the Design Consultant’s approval, the City will have no claim against the Design Consultant arising out of any alleged defects, deficiencies or flaws in the Design Documents.

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

5.04 Design Consultant's Records. Records of the Design Consultant's direct personnel, consultant and reimbursable expenses pertaining to this Agreement and records of accounts between the City and the Design Consultant shall be kept on a generally recognized accounting basis. The Design 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.

5.05 Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than the Design Consultant named herein. The Design Consultant understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting. Any attempt by the Design Consultant to assign or subcontract its rights hereunder without such prior written consent of the City shall, at the option of the City, automatically terminate this Agreement and all rights of the Design Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the City. In the event any such subcontracting shall occur, with the City's approval, such action shall not be construed to create any contractual relationship between the City and such subcontractor, and the Design Consultant named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

5.06 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Consultant may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Consultant shall insert the foregoing provision in all subcontracts.

5.07 Insurance.

- (a) General Conditions: Design 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. Design 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, Design Consultant 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 Design Consultant. Design 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 Design Consultant. The Design Consultant shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- (b) Proof of Insurance: Design Consultant shall provide a copy of this Agreement to its insurance agent or broker. Design Consultant may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Design 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 Design Consultant's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- (c) Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- (d) Waiver of Subrogation: For all coverages required under this Agreement, with the exception of Professional Liability - if required, Contractor's insurer shall waive subrogation rights against the City.
- (e) Subconsultants: All 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 Design Consultant. Design Consultant shall include all such subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subconsultants maintain the required coverages. Design Consultant agrees to provide proof of insurance for all such subconsultants upon request by the City.
- (f) Workers' Compensation/Employer's Liability Insurance: Design 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. Design 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 Design 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 Design Consultant executes this Agreement.

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

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

(i) Professional Liability (Errors and Omissions): Design Consultant shall maintain limits of \$1,000,000 for each claim, and \$1,000,000 aggregate limit for all claims.

(j) Additional Provisions:

(1) 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 outside the limits of liability;

(iii) A severability of interests, separation of insureds (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.

(2) 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.

(ii) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general



aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

5.08 Defense and Indemnification.

(a) To the fullest extent permitted by law, the Consultant 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 related to the work performed under this Agreement that are attributable to the negligence or fault of the Design Consultant or the Design Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.

(b) Design Consultant's obligation to defend and indemnify may be determined after Design Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the parties. Design Consultant's duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Design Consultant is not named as a Defendant.

(c) Design 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 Design Consultant under the terms of this indemnification obligation. The Design 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.

5.09 Colorado Governmental Immunity Act. The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

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

- Exhibit A**      Scope of Work
- Exhibit B**      Key Personnel and Rates
- Exhibit C**      Certificate of Insurance

In the event of an irreconcilable conflict between a provision of Sections 1 through 5 and the listed Exhibits, or between provisions of any attachments, such that it is impossible to give effect to both,

the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in descending order:

- Sections 1 through 5
- Exhibit A**
- Exhibit B**
- Exhibit C**

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

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

5.13. Conflict of Interest.

- (a) The parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described herein, and the Design Consultant further agrees not to hire or contract for services with any employee or officer of the City which would be in violation of the Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.
- (b) The Design 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 Design 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 Design Consultant by placing the Design Consultant's own interests, or the interests of any party with whom the Design 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 Design Consultant written notice which describes the conflict. The Design 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.

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

5.15 Time is of the Essence. The parties agree that in the performance of the terms, conditions and requirements of this Agreement by the Design Consultant, time is of the essence.

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

5.17 Proprietary or Confidential Information.

- (a) City Information: The Design Consultant acknowledges and accepts that, in performance of its work under the terms of this Agreement, the Design Consultant may have access to Proprietary Data or confidential information which may be owned or controlled by the City and that the disclosure of such data or information may be damaging to the City or third parties. As such, the Design Consultant agrees that all information provided or otherwise disclosed by the City to the Design Consultant be held in confidence and used only in the performance of its obligations under this Agreement. The Design Consultant shall exercise the same standard of care to protect such information as a reasonably prudent professional would to protect its own proprietary or confidential data. "Proprietary Data" shall mean geographic materials or Geographic Information Systems ("GIS") data owned by the City and County of Denver including but not limited to maps, computer programs, aerial photography, methodologies, software, diagnostics and documents; or any other materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Design Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.
- (b) Design Consultant's Information: The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise the Design Consultant of such request in order to give the Design Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Design Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Design Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Design Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

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

5.19 No Employment of Illegal Aliens to Perform Work Under the Agreement.

- (a) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).
- (b) The Design 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 Design 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 subconsultant that fails to certify to the Design 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 the E-Verify Program.
  - (4) It is prohibited from using 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 Design 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 subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant and the City within three (3) days. The Design Consultant will also then terminate such subconsultant if within three (3) days after such notice the subconsultant does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant provides information to establish that the subconsultant 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 Design Consultant is liable for any violations as provided in the Certification Ordinance. If Design 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 Design 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 Design Consultant from submitting bids or proposals for future contracts with the City.

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

5.21 Waiver of C.R.S. § 13-20-802, et seq. The Design Consultant specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes (also designated C.R.S. § 13-20-802 *et seq.*) relating to design defects in any project under this Agreement.

5.22 Survival of Certain Contract Provisions. The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement, (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Design Consultant's obligations for the provision of 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.

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

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

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

to the City: Executive Director of Public Works  
Department of Public Works  
City and County of Denver  
201 West Colfax, Department 608  
Denver, Colorado 80202

to the Design Consultant: Toole Design Group, LLC  
8484 Georgia Avenue, Suite 800, Silver  
Spring, MD 20910

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

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

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

5.28 Electronic Signatures and Electronic Records. Design 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.

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**Contract Control Number:** PWADM-201952155-00  
**Contractor Name:** Toole Design Group, LLC

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:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

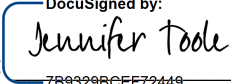
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PWADM-201952155-00  
Toole Design Group, LLC

By:  \_\_\_\_\_  
7B9329BCEF72449...

Name: Jennifer Toole  
(please print)

Title: President  
(please print)

ATTEST: [if required]

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

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

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



## Scope of Services

### 1) Project Management

Each project will be managed by DPW with assistance from the Design Consultant to provide design services, analysis and public engagement. The Design Consultant will manage the day-to-day process under the direction of a DPW Project Manager and Project Management Team (PMT). DPW will have primary authority for contract management, such as review and approval of monthly progress reports and invoices. The DPW Project Manager will be responsible for the day-to-day management of the Design Consultant and satisfactory completion of the scope of work.

The Design Consultant shall prepare a Project Management Plan (PMP) for this contract. The PMP will specify the roles and responsibilities of the Design Consultant and other project participants, identify goals and key objectives, identify specific work tasks, sub-tasks and provide a timeline, schedule, and scope of work. Consistent coordination between the Planning Consultant and Design Consultant for each Community Network will be necessary, as well as coordination with the Planning and Design Consultants for the two other Community Networks. Flexible, pro-active, and responsive project management is necessary for the successful completion of the design efforts.

#### **Deliverables:**

- Kickoff/Scoping meeting (1)
- Kickoff/Scoping meeting agenda and notes
- Project Management Plan with schedule
- Monthly progress report and schedule update submittals, including a corrective action plan narrative for negative float critical path milestones
- Regular meetings between City and Design Consultant project managers
- Meeting notes from all project meetings

### 2) Public and Stakeholder Engagement

Due to the unique rollout and deployment of the Community Network projects, there will be a coordinated public engagement campaign. DPW is in the process of negotiating an agreement with People For Bikes that will support a high-level discussions of mobility at the city, local network and corridor levels. The design public engagement approach will require coordination with an overall marketing message being prepared for each Community Network. The Design Consultant will be responsible for public engagement on the project level. This includes coordination with DPW, People for Bikes and other entities to identify appropriate times to meet with the public and stakeholders, and preparation of meeting materials associated with the design deliverables.

#### **Deliverables:**

- Public meeting materials including electronic and print (e.g. roll plat) presentation materials, sign-in sheets, meeting minutes, as required
- In-person attendance at public meetings
- In-person attendance at stakeholder meetings to review the design concept, aesthetic treatment options, and final design details

### 3) Existing Conditions

For projects that required a planning phase, existing conditions will be included in the documentation prepared by the Planning Consultant. It is not anticipated that the Design Consultant will need to provide any further existing conditions data or analysis for these specific projects. It could be necessary to hold coordination meetings with the Planning Consultant.

For projects that advanced directly to the design phase, the Design Consultant will need to document existing conditions as necessary to advance the design. This task may include, but is not limited to:

- Survey to establish control points, horizontal and vertical topography and planimetrics, existing utilities (surface and subsurface), existing subsurface features location and depth (trolley tracks)
- Field visits to document and confirm:
  - On-street parking inventory and utilization
  - Curb lane uses/regulations
  - Flowline to flowline width,
  - Access locations
  - Existing signage
  - Inlet locations/condition
- Preparation of existing conditions maps and graphics (roll plot, cross-sections, etc.)
- Data collection:
  - AM and PM peak hour traffic counts including pedestrians, bicycles, and vehicles
  - Turning movement counts at intersections, as needed
  - Mid-day and evening on-street parking utilization
  - Vehicle speed data
- Documenting existing pedestrian curb ramp conditions (existing slopes, presence of landings) and roadway cross-slope at crosswalks
- Identifying any localized flooding concerns that may need to be addressed during project design and construction as outlined in the current DPW Storm Drainage Master Plan.

**Deliverables:**

- Existing conditions memo summarizing findings and underlying data as required by each project
- Survey data (meeting the City Surveyor's requirements)
- Meeting notes from all coordination meetings

**4) Preliminary Design**

The Community Networks include projects that either required a planning phase completed by the Planning Consultant or can proceed directly to the design phase. Projects with a planning phase will have a concept design and existing conditions analysis completed by the Planning Consultant. Designs will need to consider available right-of-way, traffic operations, delay and safety for cyclists, pedestrians and motorists.

Projects with a Concept Design

The Design Consultant will carry forward the preferred concept design identified in the planning phase by the Planning Consultant. The concept design will be advanced to an AutoCAD base map based on aerial imagery/field work/survey data and any additional information from Task 3. The assumptions and recommended improvements from the planning phase will be confirmed and modified as needed in Task 4 to ensure successful project implementation. Additional analysis could include signal warrant analysis, traffic diversion assessment or other traffic analysis services or modeling (HCS, Synchro, VISSIM, etc). The development of typical cross-sections and a roll plot of the concept design may be required for presentation at stakeholder meetings.

Projects without a Concept Design

The projects without a planning phase will require the development of a concept design. An AutoCAD base map will be set up based upon the aerial imagery/field work/survey obtained in Task 3. Additional analysis may include signal warrant analysis, traffic diversion assessment or other traffic analysis services or modeling (HCS Synchro, VISSIM, etc). The Design Consultant will develop concept design alternatives for the project. The alternatives will illustrate ideas for striping, curb lane uses, intersection treatments, and interactions with

connecting facilities. The development of typical cross-sections and a roll plot of the alternatives will be required for presentation at public engagement meetings. A preferred concept design will be identified based on the existing conditions analysis, public engagement process, and DPW project team input.

**Deliverables (varies based upon type of project):**

- Summary of additional Task 4 traffic analysis, PDF
- Base map, CADD
- Cross-sections for presentation, PDF
- Roll plot of alternative concept designs, PDF
- Roll plot of preferred concept design, PDF

**5) Final Design**

Based upon the Preliminary Design from Task 4, the Design Consultant will move forward with preparation of final design documents. The Design Consultant will prepare design submittals at sixty percent (60%), ninety percent (90%), and one hundred percent (100%) design completion. The Design Consultant will address two (2) total rounds of comments from DPW, one each after the 60% and 90% submittals. The 60% and 90% submittals will be made electronically via PDF files. The 100% submittal will include an electronic submittal of the PDF and AutoCAD files.

***60% Design Package***

The Design Consultant will advance the preliminary design from Task 4 to an approximately 60% design level and develop a set of construction documents (plans) and an engineer's opinion of probable construction cost (construction cost estimate). The construction documents will typically be developed on 11"x17" plan sheets at a 1" = 40' scale (depending upon specific project needs). Potential design exceptions and waivers will be identified; DPW will be responsible for analysis and documentation of any needed waivers.

The following items will typically be included in a 60% design package depending upon the project scope. Please note that a buffered bike lane project will have a significantly different scope from a neighborhood bikeway project. Not all items listed below will be needed for each project.

- Cover sheet with key map and index
- General notes sheets
- Standard plans/drawings list
- Demolition plans (striping, paving, etc.)
- Signing and striping plans including:
  - Callouts for stripe types, widths, and colors
  - New signs (parking, traffic and bicycle wayfinding) with callouts per DPW sign code, including existing signs and modifications to existing signs
  - Parking meter adjustments
- Details and callouts for any green/white paint symbols (such as bike symbols, conflict markings and bike boxes)
- Details and callouts for any barrier features (such as flexible delineators or cast-in-place curb as applicable)
- Quantity summary sheet with installation and demolition quantities by sheet
- Storm sewer plan and profile sheets (as needed)
- Traffic signal plan and note sheets (as needed)
- Curb return plan and profile detail sheets (as needed)
- Intersection and curb ramp detail sheets (as needed)
- Roadway plan sheets (as needed)

- Survey control diagrams (as needed)
- ROW plans (as needed)
- Traffic control plan (as needed)
- Other applicable details sheets such as Forestry tree protection zone details, etc. (as needed)
- Plan sheets for water quality elements (as needed)
- Construction cost estimate
- Drainage memo for documentation of hydrology and hydraulic design (as needed)
- Utility relocation design/plan (as needed)
- Subsurface utility engineering plans (per State statute as required)

The Design Consultant will conduct an internal quality control/quality assurance check prior to submittal to DPW.

**Deliverables (varies based upon type of project):**

- 60% design package submittal, PDF

***Final Design - 90% and 100% Engineering Design Packages***

Comments from the 60% design package review will be addressed. Construction documents will be finalized and project special provisions and specifications for any details that are not included in the plans or part of the City's standard specs will be prepared as necessary.

The Design Consultant will conduct an internal quality control/quality assurance check prior to submittal to DPW.

**Deliverables:**

- 90% design package submittal - PDF format
  - Includes: Construction documents, construction cost estimate, project specifications and 60% comment resolution matrix.
- 100% design submittal - PDF, AutoCAD plus other formats as applicable for documentation
  - Includes: Signed and sealed plans by Colorado Professional Engineer, construction cost estimate, project specifications, and any design documentation, tabulations, analysis files and assumptions as applicable. 90% comment resolution matrix.

**6) Design Support During Construction**

The Design Consultant will provide design support during construction of the bike network. Effort is anticipated to potentially include office meetings, field visits, and responses to contractor RFIs and questions.

**Deliverables:**

- Meeting notes
- RFI responses

# EXHIBIT B

## CONSULTANT TEAM MEMBERS

PRIME CONSULTANT: Toole Design Group, LLC

Title/Classification	Responsibilities	Rate/Hr.
Principal-in-Charge	Provides senior-level client contact and services and is ultimately responsible for team performance.	\$340
Project Manager	Plans and manages the project delivery process.	\$262
Engineer Lead I	Responsible for overall quality control; leads preparation of design efforts; provides direction to junior staff and interface with clients.	\$218
Senior Engineer	Plans and manages the project delivery process for large or complex projects; leads public engagement efforts and serves as a principal client contact.	\$188
Project Engineer	Prepares design criteria and design analysis reports; develops contract documents (plans and specifications); develops opinions of cost.	\$166
Engineer II	Prepares engineering reports, calculations and specifications; responds to contractor requests for information and prepares supporting documentation for construction field changes.	\$129
Engineer	Designs and completes project elements; prepares reports and calculations under supervision.	\$110
Urban Designer	Designs and completes project elements under supervision, completes assignments related to landscape architecture and urban design technical criteria, methods, graphical techniques, and skills.	\$154
Planning Lead I	Responsible for quality control of planning products; leads preparation of planning efforts and provides direction to junior staff and interface with clients.	\$221
Senior Planner	Prepares analysis reports; develops preliminary improvement recommendations; leads data gathering and GIS mapping efforts; supports engineering efforts and oversees public involvement material development.	\$181
Project Planner	Assists with analysis reports; develops improvement recommendations; leads data gathering.	\$158
Planner II	Completes planning project elements and prepares reports under supervision	\$128

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3.04

All reimbursable expenses are subject to the review and approval of the City. The additional expenses of the Consultant reimbursable by the City shall include:

- (1) Mileage: Reimbursable at the current IRS Business Rate ONLY when Consultant is required to drive to a project located outside the City and County of Denver Boundary.
- (2) Actual cost of reproducing and printing reports, drawings, specifications and other work products, and the associated cost for shipping and handling. These reimbursable expenses pertain only to requests made to the Consultant from the City, and exclude intra-office printing, scanning and reproduction required by the Consultant to complete the work.
- (3) Actual cost for expendable supplies and services not normally used on a routine or normal basis in an architectural or engineering office (i.e. aerial photography) and which are provided especially under this Agreement for the benefit of the City.

## CONSULTANT TEAM MEMBERS

PRIME CONSULTANT: Toole Design Group, LLC

Title/Classification	Responsibilities	Rate/Hr.
Planner	Supports the development of reports, conducts data entry and analysis, prepares graphics for public or technical presentations, supports clients and public meetings, performs fieldwork and onsite data gathering activities.	\$103
Landscape Architecture Lead	Prepares design criteria and analysis reports; develops contract documents; develops opinions of cost within streetscape and landscaping focus areas; develops environmentally sustainable design	\$218
Landscape Architect	Prepares specifications and cost estimates for complex projects; manages and leads community or stakeholder engagement efforts.	\$122
Designer II	Prepares graphics for public presentations and technical manuals and reports; prepares layout of landscape and hardscape plans; selects materials and plants for design plans and construction details; quantity takeoffs and unit price research for cost estimates.	\$123
Designer I	Prepares design reports, calculations, feasibility studies, conceptual designs, and related memoranda; develops material and furnishing construction details; prepares cost estimates.	\$108
GIS Analyst	Responsible for GIS databases; designs new and updates existing maps; prepares metadata and other information.	\$92
GIS Specialist	Develops Macros for GIS analysis; prepares document layout and manipulation.	\$127
Graphic Designer	Leads development of marketing materials.	\$113
Intern	Assists with data gathering, research, and document production.	\$66
Administration	Technical-level services involving the preparation of project deliverables, word processing, and project accounting.	\$69
Senior Advisor	Provides overall QA and QC of the entire project	\$258

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3.04

All reimbursable expenses are subject to the review and approval of the City. The additional expenses of the Consultant reimbursable by the City shall include:

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**SUB-CONSULTANT TEAM MEMBERS**Firm Name: HDR Engineering, Inc.

Title/Classification	Responsibilities	Rate/Hr.
Administrative	Administrative support personnel who provides support for work processing, spreadsheets, graphics, scheduling, budget control and communications; 0-8 years of experience	\$67
CAD/GIS Technician Level I	Performs work assigned by mid-level and senior staff; Performs research and data collection; Supports others in the preparation of technical reports, GIS maps, graphics; 0-2 years of experience	\$80
CAD/GIS Technician Level II	A professional with specific experience in CAD design, mapping, technical graphics, GIS, and computer applications for transportation projects; 2-10 years of experience	\$90
CAD/GIS Technician Level III	A senior professional with specific experience in CAD design, mapping, technical graphics, GIS, and computer applications for transportation projects; Works on multi-discipline projects and leading the development of complex plan sets; 10-20 years of experience	\$120
Communication Coordinator/Public Outreach, Graphic Artist	A professional with specific graphics experience in agency and stakeholder outreach including public meetings and communications materials.	\$95
Communication Coordinator/Public Outreach, Level I	A professional with specific experience in agency and stakeholder outreach including public meetings and communications materials.	\$75
Communication Coordinator/Public Outreach, Level II	A professional with specific experience in agency and stakeholder outreach including public meetings and communications materials.	\$90
Communication Coordinator/Public Outreach, Level III	A professional with specific experience in agency and stakeholder outreach including public meetings and communications materials.	\$111
Communication/Public Outreach Manager	A professional with specific experience in agency and stakeholder outreach including public meetings and communications materials.	\$139
Designer Level II	A registered professional engineer; Manages individual work tasks; Works to develop scopes and budgets; Well trained within their respective discipline; Directs the works of junior staff; 5-10 years of experience	\$94
Designer Level III	A registered professional engineer; Manages technical resources and individual work tasks; Works to develop scopes and budgets; Well trained within their respective discipline; Directs the works of junior and mid-level staff; 10-15 years of experience	\$122
EIT Level I	A recent college graduate; Performs work assigned by licensed mid-level and senior staff; 1-3 years of experience	\$96

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.9

All reimbursable expenses are subject to the review and approval of the City. The additional expenses of the Consultant reimbursable by the City shall include:

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- (3) Actual cost for expendable supplies and services not normally used on a routine or normal basis in an architectural or engineering office (i.e. aerial photography) and which are provided especially under this Agreement for the benefit of the City.

**SUB-CONSULTANT TEAM MEMBERS**Firm Name: HDR Engineering, Inc.

Title/Classification	Responsibilities	Rate/Hr.
EIT Level II	A recent college graduate; Performs work assigned by licensed mid-level and senior staff; 1-3 years of experience	\$111
EIT Level III	A recent college graduate; Performs work assigned by licensed mid-level and senior staff; 1-3 years of experience	\$124
Planner Level I	Manages individual task orders; Works to develop scopes and budgets; Directs technical work with junior staff and coordinates directly with CCD; 8+ years of experience	\$94
Planner Level II	Manages individual task orders; Works to develop scopes and budgets; Directs technical work with junior staff and coordinates directly with CCD; 4-8 years of experience	\$115
Project Principal	A senior officer of the company; Signature authority; Authority to dedicate resources; Extensive knowledge of engineering practices; Knowledge of vast resources available within HDR	\$252
Project Controller Level I	Project support personnel who provides support for invoicing, accounts payable/receivable, project controls, budgeting and scheduling	\$90
Project Controller Level II	Project support personnel who provides support for invoicing, accounts payable/receivable, project controls, budgeting and scheduling	\$104
Project Engineer Level I	A recent graduate who has technical training in design, planning, CAD and GIS; Capable of working productively under the direction of senior staff; Well trained within their discipline; 6-12 years of experience	\$132
Project Engineer Level II	A registered professional engineer or accredited position; Fully trained within their discipline; Direct the work of junior staff; 10-15 years of experience	\$150
Project Manager Level I	Works to develop scopes and budgets; Manages multi-discipline task orders and coordinates between technical disciplines; Provides day-to-day technical management of task orders; Coordinates directly with the client task order manager on a day-to-day basis; 8-12 years of experience	\$187
Project Manager Level II	Works to develop scopes and budgets; Manages multi-discipline task orders and coordinates between technical disciplines; Provides day-to-day technical management of task orders; <del>Develops assignments for staff. Coordinates directly with the client task order manager on a day-to-day basis; More than 12 years of experience</del>	\$200

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.9

All reimbursable expenses are subject to the review and approval of the City. The additional expenses of the Consultant reimbursable by the City shall include:

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**SUB-CONSULTANT TEAM MEMBERS**

Firm Name: Eugene Lynne

Title/Classification	Responsibilities	Rate/Hr.
Principal Surveyor	Oversee office and field production	\$130/Hr
Engineering Manager	Develop design and direct plan production	\$130/Hr
Project Surveyor	Perform field and office tasks	\$85/Hr
Engineering Aide	Plan and report production as directed	\$75/Hr

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.5

All reimbursable expenses are subject to the review and approval of the City. The additional expenses of the Consultant reimbursable by the City shall include:

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**SUB-CONSULTANT TEAM MEMBERS**Firm Name: StudioCPG

Title/Classification	Responsibilities	Rate/Hr.
Senior Principal	Design, Con Docs, Quality Review, CO, Contracting	\$200
Principal	Design, Con Docs, Quality Review, CO, Contracting	\$175
Sr. Project Manager	Design, Con Docs, Quality Review, CO	\$155
Project Manager I	Design, Con Docs, Quality Review, CO	\$130
Landsc Architect I	Design, Con Docs, CO	\$110
Landsc Architect II	Design, Con Docs, CO	\$107
Landsc Architect III	Design, Con Docs, ACAD	\$100
Landsc Designer I	DD, CDs, ACAD	\$95
Landsc Designer II	DD, CDs, ACAD	\$85
Graphic Design	Graphic Design, Graphic Support, Production	\$95
Administration	Admin Support, Document Production, Clerical, Billing	\$75
Intern	Office Support, Production Support, ACAD	\$60

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3.2

All reimbursable expenses are subject to the review and approval of the City. The additional expenses of the Consultant reimbursable by the City shall include:

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**SUB-CONSULTANT TEAM MEMBERS**Firm Name: 105 West, Inc.

Title/Classification	Responsibilities	Rate/Hr.
Dir. of Survey/Mapping	Manage Projects/Perform Boundary Survey work and ROW work	\$ 130
Project Surveyor	Manage Projects/day-to-day field operations and perform all surveying	\$ 105
Survey Technician	Perform all types of surveying required for project completion	\$ 85
Party Chief	Perform field work and coordination	\$85
Instrument Operator	Assist Party Chief in performing field work and coordination	\$60
Administrative	Perform administrative duties	\$ 60
Survey Crew (2-Man)	Perform field work and coordination	\$ 145
Survey Crew (1-Man)	Perform field work and coordination	\$ 120
Survey Crew (3-Man)	Perform field work and coordination	\$ 220

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 2.7

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- (3) Actual cost for expendable supplies and services not normally used on a routine or normal basis in an architectural or engineering office (i.e. aerial photography) and which are provided especially under this Agreement for the benefit of the City.

## SUB-CONSULTANT TEAM MEMBERS

Firm Name: Goodbee & Associates, Inc.

List **ALL** potential firm personnel titles/classifications that may be utilized under the Agreement, and their respective hourly rate. Do not list names of personnel, only titles (i.e. Project Manager). Provide additional sheets as necessary.

<b>Title/Classification</b>	<b>Responsibilities</b>	<b>Rate/Hr.</b>
President	Directs all aspects of the firm's operations	\$200
Principal	Directs all aspects of the firm's operations	\$185
Project Manager III	Leads and reviews technical work	\$150
Project Manager II	Leads and reviews technical work	\$135
Project Manager I	Leads and reviews technical work	\$125
Landscape Architect (Principal)	Leads and reviews technical work	\$160
Landscape Architect II	Leads and reviews technical work	\$120
Landscape Architect I	Leads and reviews technical work	\$100
Designer III	Completes technical work under direction of a PM/LA	\$115
Designer II	Completes technical work under direction of a PM/LA	\$110
CAD II	Completes technical work under direction of a PM/LA	\$100
CAD I	Completes technical work under direction of a PM/LA	\$80
Administrator	Bookkeeping and general administration	\$110
Administrative Assistant	General administration	\$80

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3.1.

All reimbursable expenses are subject to the review and approval of the City. The additional expenses of the Consultant reimbursable by the City shall include:

- (1) Mileage: Reimbursable at the current IRS Business Rate ONLY when Consultant is required to drive to a project located outside the City and County of Denver Boundary.
- (2) Actual cost of reproducing and printing reports, drawings, specifications and other work products, and the associated cost for shipping and handling. These reimbursable expenses pertain only to requests made to the Consultant from the City, and exclude intra-office printing, scanning and reproduction required by the Consultant to complete the work.
- (3) Actual cost for expendable supplies and services not normally used on a routine or normal basis in an architectural or engineering office (i.e. aerial photography) and which are provided especially under this Agreement for the benefit of the City.

**SUB-CONSULTANT TEAM MEMBER**Firm Name: Communication Infrastructure Group

Title/Classification	Responsibilities	Rate/Hr.
Principal	Executive oversight	\$215.00
Senior Counselor	Contract management and strategic counsel as needed	\$195.00
Chief Creative Officer	Works with client to develop overall direction of graphic concepts	\$195.00
Senior Strategic Director	Development of strategic messaging and program direction	\$190.00
Counselor II	Day-to-day issues management as needed	\$170.00
Counselor I	Project oversight and coordination of outreach activities	\$141.00
Video Producer	Manages video production process	\$141.00
Account Supervisor	Manager of day-to-day outreach activities	\$129.00
Creative Art Director	Manages the graphic design process	\$126.00
Associate Creative Director	Production of graphics, illustrations and InfoGraphics as needed	\$115.00
Video Editor/Videographer	Develops video content	\$115.00
Animator	Animation production / Graphics	\$115.00
Photographer	Provides photography services as needed	\$100.00
Associate II	Mid-Level project oversight and coordination	\$99.00
Graphic Designer	Develops graphic concepts per client direction	\$95.00
Web Designer	Provides web design services as needed	\$84.00
Associate I	Supports the project with research, event planning, meeting support, etc.	\$84.00
Specialist	Supports the project with research, event planning, meeting support, etc.	\$68.00
Production Assistant	Assists with video production services as needed	\$68.00
Account Coordinator	Provides entry level project support as needed	\$37.00

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3

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**SUB-CONSULTANT TEAM MEMBERS**Firm Name: SurvWest, LLC

List **ALL** potential firm personnel titles/classifications that may be utilized under the Agreement, and their respective hourly rate. Do not list names of personnel, only titles (i.e. Project Manager).

Title/Classification	Responsibilities	Rate/Hr.
Principal Engineer	Oversight of engineering design and quality; technical design direction	\$186.00
Project Engineer	Performs design and engineering calculations	\$170.00
Junior Engineer	Assist with the design and engineering calculations under the supervision of a licensed engineer	\$127.00
Engineering Technician	Designing, planning and execution of projects; advanced knowledge of CAD	\$96.00
Field Coordinator	Oversight of field activities, processes and technical merit. Highest level knowledge of process, equipment, field conditions and expertise	\$122.00
Senior Designator	Oversight of designation process, directs field staff, high-level knowledge of equipment, conditions and technical expertise	\$175.00
Junior Designator	Performs designation activities, operates associated equipment	\$150.00
Locator	Performs test hole and locating activities, operates associated equipment	\$150.00
CAD Technician	Performs drafting of technical drawings	\$96.00
Principal Surveyor	Oversight of surveying process, directs staff and responsible for technical merit	\$156.00
Field Surveyor	Performs field surveying activities	\$110.00
Office Surveyor	Processes field survey data, oversight of office process, produces deliverables	\$110.00

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 3.1

Outside services and expenses to be billed at actual cost may include, but not limited to:

- Subconsultants
- Traffic Control Subcontractor
- Permit Fees
- Waste Disposal Fees
- Field Supplies

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**SUB-CONSULTANT TEAM MEMBERS**

Firm Name: All Traffic Data Services, LLC

Title/Classification	Responsibilities	Rate/Hr.
Project Manager	Project oversight and coordination	\$75.00
Data Processor	Review data for accuracy and process data into deliverable format	\$62.50
Technician	Collect all field data and process data	\$50.00

Multiplier, which when multiplied by the direct labor rate yields the above hourly billing rate: 1.0

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# EXHIBIT C CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/08/2019
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**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 have ADDITIONAL INSURED provisions or 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).**

<b>PRODUCER</b> Klein Agency, LLC P.O. Box 219  Timonium MD 21094	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> (410) 832-7600 <b>FAX (A/C, No):</b> (410) 832-1849 <b>E-MAIL ADDRESS:</b> certs@kleinagencyllc.com  <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> </thead> <tbody> <tr> <td><b>INSURER A:</b> National Surety Corp. (AM Best A+)</td> <td style="text-align: center;">21881</td> </tr> <tr> <td><b>INSURER B:</b> American Automobile Ins. Co. (AM Best A+)</td> <td style="text-align: center;">21849</td> </tr> <tr> <td><b>INSURER C:</b> Trumbull Insurance Co (AM Best A+)</td> <td style="text-align: center;">27120</td> </tr> <tr> <td><b>INSURER D:</b> Continental Casualty Company (AM Best A+)</td> <td style="text-align: center;">20443</td> </tr> <tr> <td><b>INSURER E:</b></td> <td></td> </tr> <tr> <td><b>INSURER F:</b></td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	<b>INSURER A:</b> National Surety Corp. (AM Best A+)	21881	<b>INSURER B:</b> American Automobile Ins. Co. (AM Best A+)	21849	<b>INSURER C:</b> Trumbull Insurance Co (AM Best A+)	27120	<b>INSURER D:</b> Continental Casualty Company (AM Best A+)	20443	<b>INSURER E:</b>		<b>INSURER F:</b>	
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<b>INSURED</b>  Toole Design Group, LLC 8484 Georgia Avenue, Suite 800  Silver Spring MD 20910-5609															

**COVERAGES** **CERTIFICATE NUMBER:** 19-20 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			ABC80926019	01/01/2019	01/01/2020	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 10,000</td></tr> <tr><td>PERSONAL &amp; ADV INJURY</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 4,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$ 4,000,000</td></tr> <tr><td>Employee Benefits</td><td style="text-align: right;">\$ 1,000,000</td></tr> </table>	EACH OCCURRENCE	\$ 2,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	MED EXP (Any one person)	\$ 10,000	PERSONAL & ADV INJURY	\$ 2,000,000	GENERAL AGGREGATE	\$ 4,000,000	PRODUCTS - COMP/OP AGG	\$ 4,000,000	Employee Benefits	\$ 1,000,000
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C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <b>(Mandatory in NH)</b> If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <b>N</b>	N/A	30WECAC6M1V	01/01/2019	01/01/2020	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td><input checked="" type="checkbox"/> PER STATUTE</td> <td><input type="checkbox"/> OTH-ER</td> <td></td> </tr> <tr><td>E.L. EACH ACCIDENT</td><td></td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td></td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td></td><td style="text-align: right;">\$ 1,000,000</td></tr> </table>	<input checked="" type="checkbox"/> PER STATUTE	<input type="checkbox"/> OTH-ER		E.L. EACH ACCIDENT		\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE		\$ 1,000,000	E.L. DISEASE - POLICY LIMIT		\$ 1,000,000		
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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured. See attached for specific additional insured wording.

<b>CERTIFICATE HOLDER</b>  City and County of Denver, Department of Public Works 201 W. Colfax Ave. Denver CO 80202	<b>CANCELLATION</b>  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  
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AGENCY CUSTOMER ID: \_\_\_\_\_

LOC #: \_\_\_\_\_



## ADDITIONAL REMARKS SCHEDULE

Page \_\_\_\_\_ of \_\_\_\_\_

<b>AGENCY</b> Klein Agency, LLC		<b>NAMED INSURED</b> Toole Design Group, LLC	
<b>POLICY NUMBER</b> _____		<b>EFFECTIVE DATE:</b> _____	
<b>CARRIER</b> _____	<b>NAIC CODE</b> _____		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** \_\_\_\_\_ **FORM TITLE:** : Notes

If required under an insured written contract, executed prior to any loss, Certificate Holder is an Additional Insured under the General Liability Policy, but only with respects to liability arising from work performed by or on behalf of Toole Design Group, LLC.

If required under an insured written contract, executed prior to any loss, Certificate Holder is an Additional Insured under the Automobile Policy, but only with respects to liability arising from the operation of vehicles by employees of Toole Design Group, LLC.

If required under an insured written contract, executed prior to any loss, Waiver of Subrogation is provided for the certificate holder under the General Liability, Automobile Liability and Workers Compensation Policies.

It is further understood that coverage provided the Additional Insured under the General Liability and Automobile Liability shall be primary and non-contributory to any other coverage available to the Additional Insured.