

ON-CALL PROJECT MANAGEMENT SERVICES AGREEMENT

between

THE CITY AND COUNTY OF DENVER

and

EM DUB DESIGN LLC

Contract No. 202159113

THIS ON-CALL PROJECT MANAGEMENT SERVICES AGREEMENT (“Agreement”) entered into between the **CITY AND COUNTY OF DENVER** (the "City"), a municipal corporation of the State of Colorado, and **EM DUB DESIGN LLC** (the "Consultant"), a Limited Liability Company, with an address is 1425 Brentwood St., Ste 17 Lakewood, CO 80214, (together, “Parties”).

RECITALS

1. The City wishes to secure professional project management services and related services to support the Department of Parks and Recreation (“DPR”) on an on-call "as needed" basis; and

2. The Consultant has the present capacity, experience and qualifications to perform professional project management services for the City in connection with the planning, design and construction of various City projects for the Department of Parks and Recreation, as specified in this Agreement; and

3. In response to the City’s Request for Proposal, the Consultant submitted a proposal for such services to the City. The Consultant and the City have negotiated a basic Scope of Services and Rates for such professional services, attached hereto and incorporated herein as **Exhibit A** and **Exhibit B**.

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

1.02 Independent Contractor. The Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Consultant nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code (“D.R.M.C.”), or for any purpose whatsoever.

1.03 Scope of Consultant’s Authority. The Consultant shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. The 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 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 – CONSULTANT'S SERVICES

2.01 General. The Consultant shall provide professional project management services as assigned by written Task Order, on an as-needed basis, in accordance with the terms and conditions of this Agreement. In general, design services are not included in the scope of this Agreement.

2.02 Professional Responsibility; Project Requirements.

- (a) All of the work performed by the 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 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 oversee the planning, design, engineering and/or construction of 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 shall be adequate and sufficient for their intended purpose.
- (d) All drawings, specifications and other products shall be overseen so that the project, when constructed in accordance with such drawings and specifications, is in compliance with all applicable laws, statutes, codes, ordinances, rules, regulations and executive orders of the City, state and federal government. All design services shall be performed by other contractors selected by the City.
- (e) The Consultant shall oversee the preparation of the plans, specifications and other documents as requested.
- (f) The reports, studies, drawings and specifications and other products overseen by the Consultant under this Agreement, when submitted by the Consultant to the DPR Executive Director ("Executive Director") and the user agency must represent a thorough study and competent solution as per usual and customary professional standards and shall reflect all architectural and engineering skills applicable to the assigned Task Order.
- (g) The Consultant shall provide services to assist in the procurement of design or construction professionals.
- (h) The Consultant shall provide services regarding the inspection, oversight and implementation of construction. The specific construction services shall be performed by other contractors selected by the City. All services shall include the Consultant's responsibility for facilitating communications between and among City and DPR team members, stakeholders and other interested parties.
- (i) The responsibilities and obligations of the Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any employee, agent, consultant or subconsultant of the City.

- (j) The 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 Consultant or its subconsultants, without additional compensation.

2.03 Project and Budget.

- (a) The Consultant agrees to discuss the City's project and budget for each assigned Task Order with the Executive Director's Designee ("DPR Designee") and further agrees, unless it has notified the City in writing that the Task Order cannot be accomplished within such budget, to accomplish the Task Order within the intent of the project and final proposal cost. Should the Consultant determine that an assigned Task Order cannot be accomplished within the final proposed cost, the Consultant shall immediately notify the DPR Designee in writing.
- (b) The Consultant shall prepare a proposal with a maximum estimated fee for a particular Task Order. Consultant agrees to complete the Task Order within the limits of the approved final proposal cost, unless otherwise modified by the City. Should all Task Order work exceed such cost, the Consultant agrees to complete the Task Order at no additional cost to City and, in a manner acceptable to the City.

2.04 Coordination and Cooperation.

- (a) The 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 Task Order. Such coordination shall consist of regular progress and review meetings with the City, work sessions with the DPR Designee or other Project Managers, 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 Task Order. If requested, the Consultant shall document 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 Consultant or its subconsultants to perform the services required under this Agreement, as appropriate.
- (b) The Consultant's Project Management services shall be diligently performed by the regular professional and technical staff of the Consultant. In the event the 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 Consultant.
- (c) The Consultant agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to through subconsultants, professional personnel in sufficient availability to meet the requirements of the City. Such personnel 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 or authorized in advance by a fully executed written Task Order.

- (d) Prior to designating an outside professional to perform subconsultant work, the 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 Task Order being contemplated, to the City and receive the DPR Designee's 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 Consultant's and the subconsultant's key professional personnel be retained for the full term of this Agreement subject to Section 4, to the extent practicable, and to the extent that such services maximize the quality of work performed hereunder.
- (f) If the Consultant or a subconsultant decides to replace any of its key professional personnel, the Consultant shall notify the DPR Designee in writing of the desired change. No such changes shall be made until replacement personnel are recommended by the Consultant and approved in writing by the DPR Designee, which approval shall not be unreasonably withheld.
- (g) If, during the term of this Agreement, the DPR Designee determines that the performance of approved key personnel or a subconsultant is not acceptable, the DPR Designee shall notify the Consultant and give the Consultant the time which the DPR Designee considers reasonable to correct such performance. Thereafter, the DPR Designee may require the Consultant to reassign or replace such key personnel. If the DPR Designee notifies the Consultant that certain of its key personnel or a subconsultant should be replaced, Consultant will use its best efforts to replace such key personnel or a subconsultant within ten (10) days from the date of the DPR Designee's notice.
- (h) Neither the Consultant nor any subconsultant shall have other interests which conflict with the interests of the City. 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 Consultant of its responsibility for contractual or professional deficiencies, errors or omissions.
- (j) The Consultant shall submit to the DPR Designee 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 Task Orders which may be assigned. Such additional personnel must be recommended by the Consultant and approved by the DPR Designee before they are assigned to a specific Task Order.
- (k) The DPR Designee shall respond to the Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the DPR Designee receives the list of changes. If the DPR Designee does not respond within that time, the changes shall be deemed to be approved.

2.06 Basic Services – General.

- (a) The Consultant shall, under the general direction of and at the written request of the DPR Designee, and as appropriate for Task Order or project, furnish experienced project management, design, planning or construction personnel to support DPR's existing personnel. Subject to an express, agreed upon limitation of such duties set forth in any

approved Task Order proposal for the particular Task Order assigned to the Consultant under this Agreement, the Consultant agrees to perform all of the services and duties set forth in this Agreement in regard to each Task Order to which it is assigned and its proposal is approved.

- (b) When directed by the DPR Designee to perform a particular Task Order, the Consultant shall prepare a Task Order-specific proposal in accordance with the scope or description of Work for that Task Order. A separate Task Order-specific proposal shall be prepared for each Task Order for which the Consultant's services are required and shall set forth, at a minimum all of the following:
 - (1) A not to exceed maximum fee for the Consultant's proposed services.
 - (2) Itemized fee breakdown. No markup will be allowed on basic services or reimbursables.
 - (3) The additional services budget, if any, for the Task Order.
 - (4) Any reimbursable expenses approved pursuant to paragraph 3.02.
 - (5) A detailed description of the Task Order and scope of work (the "Work").
 - (6) A list of deliverables for the Task Order.
 - (7) An agreed upon schedule for deliverables and completion of the Work.
- (c) Upon approval by the DPR Designee of a Task Order proposal, the approval and appropriation of funding for such Task Order, and the issuance of a written Notice to Proceed, the Consultant shall proceed to perform the Work.
- (d) The assigned Task Order shall be performed in conformance with the approved Task Order-specific proposal. The terms of this Agreement and the Consultant's scope, personnel, or rates under **Exhibit A** and **Exhibit B** cannot be amended or modified by Task Order.
- (e) The Consultant's basic services for each Task Order may consist of any one or combination of the anticipated services described below, in **Exhibit A**, or services related to the services described in this Agreement.
- (f) The Consultant shall not proceed with any Task Order until a Notice to Proceed is executed by the City and issued to the Consultant.
- (g) Nothing in this Agreement shall be construed as placing any obligation on City to proceed with any Task Order beyond the latest Task Order authorized in writing by City. Further, nothing in this Agreement shall be construed as guaranteeing the Consultant any minimum amount of Work or number of Task Orders assigned under this Agreement.
- (h) If a Task Order which is assigned to the Consultant under this Agreement is funded in whole or part by federal funds, or any other funding source, each of the applicable terms set forth in any funding arrangement for such funds shall be, and by this reference are incorporated into the Task Order-specific proposal for such Task Order, and included in the Consultant's basic services responsibilities for such Task Order.
- (i) The responsibilities and obligations of the 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 - Specific. The services described in this Section 2.07, unless specifically noted as omitted in a Task Order, are included in the agreed to fee for each Task Order.

- (a) **Review and Assessment.** Assess and measure likelihood of project financial success, and identify and propose improvements to ensure quality of financial information available. Provide a review and assessment of the project’s scope, progress, performance and financial status and forecasts as measured against baseline schedules and budgets.
- (b) **Risk Analysis.** Identify potential issues, risks and cost exposures, and provide early warning of issues in order to mitigate or minimize impacts.
- (c) **Reporting and Communication.** Report and communicate key issues and opportunities to interested agencies as directed including but not limited to the Department of Transportation and Infrastructure, Denver Arts and Venues, the Mayor’s Office, and outside partners to manage expectations and needs of affected parties.
- (d) **Financial Tracking and Reporting.** Gather necessary data, prepare and deliver financial reports that meet the needs of the City and other stakeholders.
- (e) **Support Financial Tracking.** Consultant will direct City staff on financial reporting requirements and compile financial information to prepare summary level data of project expenses (both projected and actual). Consultant will support “change management” practices to address needed project funding adjustments.
- (f) **Scheduling Support.** Consultant will compile necessary information to prepare summary level data of overall project schedules. Consultant will support “change management” practices to address needed project schedule adjustments.
- (g) **Contract Support.** Consultant will assist with contract compliance to support contracts related to the project.
- (h) **Status Updates.** Provide ongoing formal and informal presentations, as directed, to the City team, City Council, and outside partners on status of the project, including details on project status and financials.
- (i) **Meetings.** The Consultant shall attend such meetings as may be required for a complete understanding of each Task Order and when applicable, the Consultant shall document meetings and distribute meeting minutes if instructed by the DPR Designee or other Project Managers.
 - (1) The Consultant shall then 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 project needs and budget of the City.
 - (2) The Consultant shall also include as part of a Task Order all services included in the applicable portions of the approved Task Order-specific proposal.
- (j) **Project Management.** Consultant project management services generally include the management and tracking of scope, schedule and budget for DPR projects from the project evaluation phase, design procurement and management, bidding, construction administration and project closeout. Consultant will act as project manager only and separate contract will be procured for both design services and for construction.
- (k) **Project Evaluation.** During project evaluation the Consultant will review the project scope, budget and schedule of a project as well as existing site conditions, potential environmental concerns and related stakeholder information. The Consultant will verify that the proposed

scope, budget and schedule are realistic and suggest revisions as necessary to align the scope with available funding.

- (l) Project Management Plan. The Consultant will develop a project management plan using a template approved by the City to plan the work, allocate project budget between soft costs, hard costs and contingencies.
- (m) Design Procurement. The Consultant will assist with procuring appropriate design services in a manner approved by the City.
- (n) Design Management. The Consultant will manage the design consultant and direct the design process through Schematic Design, Design Development and Construction Document phases or as necessary for the project.
- (o) Public Outreach Coordination. The Consultant, through the direction of the design team, will assist the City in preparing exhibits and other information required for public outreach and stakeholder engagement activities led by the City as required for the project.
- (p) Review Coordination. The Consultant will ensure that all appropriate reviews of the design team's deliverables are coordinated and submitted in a timely manner to ensure project schedule. Reviews may include but are not limited to Parks Quality Assurance/Quality Control; Engineering, Regulatory, Analytics (ERA); Development + Zoning; Floodplain; Environmental; and Building Department/Permitting.
- (q) Professional Cost Estimating. The Consultant will provide professional cost estimating services to provide cost information at key points in the process.
- (r) Construction Procurement. The Consultant will assist with procuring appropriate construction services in a manner approved by the City.
- (s) Construction Administration and Oversight. The Consultant will provide coordination, administration, inspection and oversight as the City's Owner's Representative during the construction process and will be responsible for managing the day to day coordination between the contractor and design team.
- (t) Project Closeout. The Consultant will perform all required project closeout tasks including coordination with other City agencies as required by the City's processes.
- (u) Invoice and Pay Application Processing. The Consultant will review and approve invoices from design consultants and pay applications from construction contractors and submit approved documents for payment through the City's Finance department.
- (v) Communications. The Consultant will be responsible for coordinating all communication on the project between the City, design team, contractor, field staff and all other stakeholders.
- (w) Project Documentation and Reporting. The Consultant will prepare proper documentation throughout the duration of the project that may include but is not limited to meeting notes, milestone approvals, notices to proceed, substantial completion and final acceptance. The Consultant will schedule regular meetings with the DPR Designee to review project progress and provide updates on scope, budget and schedule.

2.08 Surveying and Testing.

- (a) The Consultant and its appropriate subconsultant shall review all survey and test results reports and shall follow the recommendation of the design professional, engineer or other subconsultant unless, in the exercise of appropriate professional judgment, the 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 is noted, based upon such exercise of professional judgment, the Consultant or its appropriate subconsultant shall report such inconsistency or inadequacy promptly to the City.
- (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 Consultant shall observe the presence of asbestos or hazardous waste material on any project site during its performance of services under this Agreement, the Consultant shall notify the City in writing immediately.
- (d) Payment to the Consultant for such surveying, testing, and abatement shall not exceed the surveying and testing budget set forth in the project specific proposal for each project.

SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING

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

3.01 Compensation. The City agrees to pay the Consultant, as compensation for any services rendered for a particular Task Order, either the maximum fee, to be set forth in each approved Task Order proposal, or an amount based on the Consultant's periodic invoices, whichever is less.

3.02 Reimbursable Expenses. Unless expressly authorized by the City as part of an approved Task Order proposal or specified in **Exhibit B**, the City will not compensate the Consultant for expenses such as postage, travel, mileage, parking, telephone, mobile services, copies or messenger service costs incurred in connection with Work performed under this Agreement. Such costs are included in the hourly rates paid by the City. The inclusion of rates for expenses in a proposal attached to a Task Order does not authorize reimbursable expenses unless the executed Task Order includes a not to exceed maximum amount for reimbursable expenses.

3.03 Additional Services. The Consultant shall only be compensated for additional services if the additional services are approved in advance by written Task Order and subject to an additional services budget for that specific Task Order.

3.04 Invoices. The Consultant shall invoice and be paid monthly based on hours worked at hourly rates included in **Exhibit B**, reimbursable expenses and additional services all subject to the maximum Task Order amount and the Maximum Contract Amount. Such invoices shall reflect the Consultant's actual hours, subconsultant costs and reimbursable costs, and shall be based on the hourly rates or other rates for services contained in **Exhibit B**. The rates contained in **Exhibit B** can be modified only by a written amendatory or other agreement executed by the parties and signed by the signatories to this Agreement in accordance with Section 6.27. The Consultant shall maintain contemporaneous hourly records of the actual hours 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 Consultant's invoice shall be separated by Task Order. Upon submission of such invoices to the DPR Designee, and approval by the City, payment shall issue. Final payment to the Consultant, for each assigned Task Order, shall not be made until after the Task Order is accepted and deliverables are

delivered to the City, and the duties agreed to in the approved Task Order proposal for that Task Order are otherwise fully performed by the Consultant.

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 Consultant, for all work performed under this Agreement, shall not exceed a maximum of **One Million Dollars and Zero Cents (\$1,000,000.00)**. In no event shall the maximum payment to the Consultant, for all work and services performed throughout the entire term of this Agreement exceed the contract maximum amount set forth above.

3.06 Appropriation and Funding.

- (a) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- (b) 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 Consultant for the work it performs on any assigned project, at the time it executes the Task Order for a project. The applicable DPR Designee, upon reasonable written request, will advise the Consultant in writing of the total amount of appropriated and encumbered funds which are or remain available for payment for all work by the Consultant on an assigned project.
- (c) The issuance of any form of order or directive by the City which would cause the aggregate amount payable to the Consultant for a specific project to exceed the amount appropriated for the Consultant's work on that project is expressly prohibited. In no event shall the issuance of any form of order or directive by the City be considered valid or binding if it requires additional compensable services to be performed, which would cause the aggregate amount payable for such services to exceed the amount appropriated and encumbered, unless and until such time as the Consultant has been advised in writing by the Executive Director or DPR Designee that a lawful appropriation sufficient to cover the entire cost of such additional work, has been made. Consultant shall work with the City to verify that the amounts already appropriated for the Consultant's services on a project are sufficient to cover the entire cost of such services. Any services 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 Consultant's own risk and sole expense.

SECTION 4 – TERM AND TERMINATION

4.01 Term. The term of this Agreement shall commence upon execution of this Agreement (“Effective Date”) and shall terminate three (3) years after the Effective Date, unless sooner terminated or extended by written amendment. The Consultant shall complete any Task Order orders in progress as of the expiration date of this agreement and the term will extend until the work is completed or earlier terminated by the Executive Director.

4.02 Termination.

- (a) Nothing herein shall be construed as giving the Consultant the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the Executive Director.
- (b) The Executive Director may terminate this Agreement for cause at any time if the Consultant's services become unsatisfactory, in the sole discretion of the Executive Director. The City shall have the sole discretion to permit the 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 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 Consultant shall be liable to the City for all reasonable costs in excess of what the City would have paid the 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 Consultant, which notice shall state the date of cancellation and termination.
- (e) If the Consultant's services are terminated, postponed or revised, or if the Consultant shall be discharged before all the work and services contemplated have been completed, or if the Task Order is, for any reason, stopped or discontinued, the 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 documents relating to the work completed or partially completed shall be delivered by the 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 Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, assisting the City during a transition to another Consultant, if applicable.

SECTION 5 – COMPLIANCE WITH SBE REQUIREMENTS

5.01 SBE Requirements.

- (a) This Contract is subject to Article VII of Chapter 28, D.R.M.C., designated as §§ 28-201 to 28-236 (the "SBE Ordinance"), and the Rules and Regulations promulgated pursuant thereto. This Agreement is also subject to the defined selection pool requirements of the SBE Ordinance. The Consultant is a certified Small Business Enterprise ("SBE") and pursuant to § 28-208, D.R.M.C., the Consultant is required to self-perform a minimum of 30% of the contract work.
- (b) Under § 28-222, D.R.M.C., the Consultant has an ongoing, affirmative obligation to maintain for the duration of this Contract, at a minimum, compliance with the SBE defined selection pool requirements and with its originally achieved level of SBE participation upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting SBEs performing on this Contract through change order,

contract amendment, force account, or as otherwise described in § 28-223, D.R.M.C. The Consultant acknowledges that:

- (1) It must establish and maintain records and submit regular reports, as required, which will allow the City to assess the Consultant's compliance with the defined selection pool requirements and additional SBE participation requirements.
- (2) The Consultant shall have a continuing obligation to immediately inform the DSBO in writing of any agreed upon increase or decrease in the scope of work of this Agreement, upon any of the bases described in § 28-223, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification. Any increase in the scope of services of this Contract, whether by amendment or other modification, which increases the dollar value of the Agreement, if such change is within the scope of work designated for performance by the Consultant or any utilized SBE subcontractor or supplier at the time of award of this Agreement, shall be contemporaneously submitted to the DSBO.
- (3) The Consultant shall achieve defined selection pool requirements and the minimum utilization requirements regarding the SBE subcontractor or supplier as respects such changed scope of work by performing such work or by retaining additional SBE subcontractor(s) or supplier(s).
- (4) The Consultant shall supply to the DSBO Director documentation required by ordinance with respect to the increased dollar value of this Contract. The Consultant shall not, during the term of this Contract:
 - (i) Fail to in fact perform as an SBE to achieve the work scope originally listed at proposal submission in order to achieve defined selection pool requirements; or
 - (ii) Modify or eliminate all or any portion of the scope of work attributable to the SBE subcontractor upon which minimum utilization is based the contract was awarded, unless directed by the City.
 - (iii) Termination or substitution of an SBE subcontractor requires compliance with § 28-226, D.R.M.C.
- (5) For contracts of one million dollars (\$1,000,000.00) and over, the Consultant is required to comply with § 28-225, D.R.M.C., as applicable, regarding prompt payment to SBE. Payment to SBE subcontractors shall be made by no later than thirty-five (35) days after receipt of an SBE subcontractor invoice.
- (6) Failure to comply with these provisions may subject the Consultant to sanctions set forth in § 28-229 of the SBE Ordinance.
- (7) Should any questions arise regarding SBE and DSBO requirements the Consultant should consult the SBE Ordinance, or may contact the DSBO representative at (720) 913-1999.

SECTION 6 – GENERAL PROVISIONS

6.01 City's Responsibilities.

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

6.02 Ownership of Documents. Documents, deliverables, work product 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 Consultant pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the "Documents"), whether the Task Order for which the Documents were created is executed or not. The Consultant shall identify and disclose, as requested, all such Documents to the City.

- (a) 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 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.
- (b) The 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.
- (c) The 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.
- (d) The Consultant shall be permitted to retain reproducible copies of all of the Documents for their 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 DPR Designee, upon termination or expiration of this Agreement.
- (e) If the City reuses Design Documents prepared by the Consultant other than for their intended use or at a new location without the Consultant's approval, the City will have no

claim against the Consultant arising out of any alleged defects, deficiencies or flaws in the Documents.

6.03 Taxes and Licenses. The Consultant shall promptly pay, when they are due, any taxes, license 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 Consultant shall furnish the Executive Director, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses or registrations and taxes. The Consultant shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and shall not cause 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.

6.04 Examination of Records and Audits; Consultant's Records. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Consultant's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Consultant to make disclosures in violation of state or federal privacy laws. Consultant shall at all times comply with D.R.M.C. 20-276. Records of the Consultant's direct personnel, Consultant's subconsultants and records of reimbursable expenses pertaining to this Agreement shall be kept on a generally recognized accounting basis.

6.05 Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than the Consultant named herein. The 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 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 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 Consultant named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

6.06 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.

6.07 Insurance.

- (a) **General Conditions.** Consultant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Consultant shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period. 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 require 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, 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. Consultant shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant. The Consultant shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.
- (b) **Proof of Insurance.** Consultant may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Consultant certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Consultant's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- (c) **Additional Insureds.** For Commercial General Liability and Automobile Liability, Consultant and subconsultant'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, Consultant's insurer shall waive subrogation rights against the City.
- (e) **Subcontractors and Subconsultants.** All subcontractors and subconsultants (including independent Consultants, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Consultant. Consultant shall include all such subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Consultant agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

- (f) Workers' Compensation/Employer's Liability Insurance. Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- (g) Commercial General Liability. Consultant shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.
- (h) Automobile Liability. Consultant shall maintain Automobile Liability with minimum 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 & Omissions): Consultant shall maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.
- (j) Additional Provisions.
 - (1) For Commercial General Liability, the policies 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 or separation of insureds provision (no insured vs. insured exclusion); and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
 - (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.
 - (3) Consultant shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Consultant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

6.08 Defense and Indemnification.

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

negligence whether active or passive, except for the sole negligence or willful misconduct of City.

- (b) Consultant's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Consultant's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
- (c) Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
- (d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- (e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

6.09 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.*

6.10 Contract Documents; Order of Precedence. This Agreement consists of Sections 1 through 6, which precede the signature page, and the following exhibits, which are incorporated herein and made a part hereof by reference:

- Exhibit A Consultant's Scope of Work
- Exhibit B Consultant's Rates & Personnel
- Exhibit C ACORD Insurance Certificate

In the event of an irreconcilable conflict between a provision of Sections 1 through 6 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 the following order:

- Sections 1 through 6
- Exhibit A
- Exhibit B
- Exhibit C

6.11 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 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.

6.12 Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and D.R.M.C. 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 D.R.M.C. 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.

6.13 Conflict of Interest.

- (a) The Consultant has a continuing duty to disclose, in writing, any actual or potential conflicts of interest including work the Consultant is performing or anticipates performing for other entities on the same or interrelated Task Orders. In the event that Consultant fails to disclose in writing actual or potential conflicts, the Executive Director, in his/her sole discretion, may terminate the applicable Task Order or the Agreement.
- (b) 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 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 D.R.M.C. Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.
- (c) The Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interests of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Consultant written notice which describes the conflict. The Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.
- (d) Consultants shall not use City resources for non-City business purposes. City resources include computers, computer access, telephones, email accounts, copiers, printers, office space and other City facilities and equipment. If, as a result of access to City resources or as a result of Consultant providing services pursuant to the Agreement, Consultant obtains information about potential City contracts before that information is publicly available, Consultant shall notify the City in writing. The City, in its sole discretion, will determine if Consultant obtained an unfair advantage and is therefore disqualified from proposing or bidding.

6.14 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 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 Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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

6.16 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.

6.17 Proprietary or Confidential Information.

- (a) City Information. The Consultant acknowledges and accepts that, in performance of its work under the terms of this Agreement, the 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 Consultant agrees that all information provided or otherwise disclosed by the City to the Consultant be held in confidence and used only in the performance of its obligations under this Agreement. The Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall include, but not be limited to, 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 Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.
- (b) Consultant's Information. The Consultant understands 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 Consultant of such request in order to give the Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

6.18 Use, Possession or Sale of Alcohol or Drugs. The 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 Consultant from City facilities or participating in City operations.

6.19 Confirmation of Lawful Employment.

- (a) This Agreement is subject to Division 5 of Article IV of Chapter 20 of the D.R.M.C., and any amendments (the "Certification Ordinance").
- (b) The Consultant certifies that:

- (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
 - (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- (c) The Consultant also agrees and represents that:
- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in 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 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 or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
 - (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.
- (d) The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.

6.20 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 Executive Director.

6.21 Waiver of C.R.S. 13-20-802, et seq. The 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.

6.22 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 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.”

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

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

6.25 Notices. Notices, concerning the termination of this Contract, notices of alleged or actual violations of the terms or conditions of this Contract, and other notices of similar importance, including changes to the person to be notified or their addresses, shall be made:

to the City: Executive Director of Parks and Recreation
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

with a copy to: City Attorney’s Office
201 West Colfax Avenue, Dept. 1207
Denver, Colorado 80202

to the Consultant: Em Dub Design LLC
1425 Brentwood St., Suite 17
Lakewood, Colorado 80214

All notices shall be in writing and provided by either personal delivery or certified mail, return receipt requested. All notices are effective upon personal delivery or upon placing the notice in the United States mail. The addresses may be changed by the Parties by written notice.

6.26 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.

6.27 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.

6.28 Electronic Signatures. 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: PARKS-202159113-00
Contractor Name: EM DUB DESIGN 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:

EXHIBIT A

Scope of Services

A. OVERVIEW:

On-call project management services will include accessibility reviews, design estimating, design oversight, design and construction services procurement, construction inspection services and project implementation oversight. Additionally, the consultant shall be responsible for facilitating communications between DPR and all team members, stakeholders, and other interested parties.

A separate design consultant will be procured to plan and design the work and a separate contractor will be procured to construct the work.

B. REQUESTS FOR BIDS:

When on-call project management services are needed, documents describing the nature of the work will be assembled into Request for Bid Proposal packages and issued to the on-call consultants for preparation of bids. The City reserves the right to request bids from more than one on-call consultant. On-call consultants shall conduct bids in accordance with City rules and regulations governing bidding and other applicable work.

C. SERVICES:

The consultant will be expected to represent the interests of DPR/the project and provide leadership in the following areas:

1. Project evaluation – reviewing and vetting scope, budget, and schedule
2. Accessibility reviews
3. Estimating services
4. Work plan development
5. Design consultant procurement and contracting
6. Facilitation of design process and inter/intra-departmental plan review
7. Technical design guidance – compliance with DPR standards and general code compliance
8. Bidding and construction procurement
9. Construction inspections
10. Construction administration
11. Reviewing and approving invoices and pay applications
12. Leading project closeout process
13. Facilitating project communications as well as communication with DPR staff and project stakeholders
14. Working with other division project managers
15. Performing all project documentation and reporting

D. ADDITIONAL REQUIREMENTS:

1. Consultants will be expected to attend training provided by DPR.
2. Consultants will be expected to follow and abide by DPR “Planning Design and Construction Standards”; current edition available:
https://www.denvergov.org/content/dam/denvergov/Portals/747/documents/planning/master_plans/DesignStandards.pdf
3. Consultants will be expected to follow and abide by The City and County of Denver “Standard Specifications for Construction General Contract Conditions”; current edition available:
<https://www.denvergov.org/content/dam/denvergov/Portals/743/documents/2011%20DENVER%20GENERAL%20CONTRACT%20CONDITIONS.pdf>

EXHIBIT B

List of Key Personnel

Consultant Name: Em Dub Design

PERSONNEL CLASSIFICATION	RESPONSIBILITY
Principal/Sr. Project Manager	Contract oversight, project management services; 50% of total effort
Project Manager	Project management services; 50% of total effort
Inspector	Inspection services; time TBD based on city needs

EXHIBIT B

Consultant Name: Em Dub Design

PERSONNEL CLASSIFICATION	BILLING RATE PER HOUR
Senior Project Manager	\$145
Project Manager	\$135
Inspector	\$90

Consultant Name: Wember

PERSONNEL CLASSIFICATION	BILLING RATE PER HOUR
President	\$160
Senior Project Manager	\$135
Project Manager	\$115
Assistant Project Manager	\$85

EXHIBIT B

Consultant Name: Jensen Hughes

PERSONNEL CLASSIFICATION	BILLING RATE PER HOUR
Sr. Accessibility Consultant	\$215-260
Accessibility Consultant	\$190-244
Sr. Fire Protection Engineer	\$215-298
Fire Protection Engineer	\$215-260
Consultant/Engineer	\$190-244
Associate	\$144-180
Technician	\$98-132
Clerical/Administration	\$98-115

Consultant Name: Group14 Engineering

PERSONNEL CLASSIFICATION	BILLING RATE PER HOUR
Sr. Principal	\$266
Principal	\$194
Sr. Software Engineer	\$176
Sr. Engineer/Sr. Project Manager II	\$172
Sr. Project Manager I	\$155
Project Manager/Job Captain/Project Engineer/Consultant III	\$139
Engineer II/Consultant II	\$122
Engineer I/Consultant I/Technical Support/Admin/Marketing II	\$98-115
Admin/Marketing I	\$94
Admin Support	\$78

EXHIBIT B

List of Key Personnel

Subconsultant Name: Wember Inc.

PERSONNEL CLASSIFICATION	RESPONSIBILITY
Principal	<u>Paul Wember</u>
Project Manager	<u>Conor Bancroft, Dan Tran, Catherine Robbins, Dan Spykstra, Melissa Curley, Brooke Kardos</u>
Construction Administrator	<u>Same as Project Manager</u>
Estimator	<u>Conor Bancroft, Dan Tran</u>
Administrative	<u>Karrin Hopper</u>
Other	<u></u>

EXHIBIT B

Schedule of Billing Rates

Subconsultant Name: Wember Inc.

PERSONNEL CLASSIFICATION	BILLING RATE PER HOUR
Principal	\$ <u>165</u>
Project Manager	\$ <u>140 SR. PM & 120 PM</u>
Construction Administrator	\$ <u>Same as Project Manager</u>
Estimator	\$ <u>\$150</u>
Administrative Staff	\$ <u>\$80</u>
Other <u>Assistant Project Manager</u>	\$ <u>\$80</u>

