

A G R E E M E N T
(Peoria Project)

THIS AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **H.C. PECK AND ASSOCIATES, INC.**, whose address is 4001 Fox Street, Denver, Colorado 80216 (the “Contractor”), collectively referred to as the Parties.

1. WORK TO BE PERFORMED: The Contractor, under the general direction of, and in coordination with, the Director of the Division of Real Estate, or other designated supervisory personnel (the “Director”), shall diligently perform the consulting services and produce all the deliverables requested by the Director for the Peoria Grade Separation Project (“Peoria Project”). The work to be performed for the Peoria Project assigned by the Director will be the Scope of Work issued by the City to the Contractor and signed by the Director and the Contractor (“Scope of Work”). Such Scope of Work will be as set forth in **Exhibit A**, attached hereto and incorporated herein, except as modified by the Director and will include a budget for such work. The Contractor agrees that during the term of this Agreement it shall fully coordinate all services performed under this Agreement through the Director, or as otherwise directed by the City. The City’s authorized representative for day-to-day administration of the Contractor’s work under this Agreement is Steve Wirth (“Project Director”), or as otherwise assigned by the Director. The Contractor shall submit work orders, correspondence, pay requests, and submittals to the Project Director. The Contractor shall faithfully perform the services required by this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals who perform services of a similar nature to those described in this Agreement.

2. The term of the Agreement is from August 1, 2012 to December 31, 2018, unless terminated earlier pursuant to the provisions of this Agreement.

3. COMPENSATION AND PAYMENT:

a. **Compensation.**

i. **Fees to the Contractor:** The City agrees to pay to the Contractor, and the Contractor agrees to accept as its sole compensation for its services rendered and costs incurred under this Agreement, a fee to be

agreed upon by the parties, but not to exceed, in total, the Maximum Contract Liability in subsection C below, but in all cases will follow the appropriate Hourly Rate Schedule attached to this Agreement as **Exhibit B**. In addition, reimbursable expenses shall be those and only those outlined in **Exhibit A**; all other expenses are reflected in Contractor's hourly rates. Finally, the cost to the City of any sub-Contractors, which costs must be disclosed in the Scope of Services, shall be the actual cost of the sub-Contractor(s) to the Contractor plus five percent (5%), also as reflected in **Exhibit B**.

ii. Expenses to be paid through the Contractor. In order to facilitate and expedite payment of costs and expenses to others ("Pass-Through Payments") that may be paid through Contractor, the parties will establish an escrow account (the "Escrow Account") at H C. Peck & Associates, Inc. ("Escrow Agent"). (The Escrow Agent and Contractor are one in the same). The City may, in its discretion, deposit amounts into the Escrow Account for the Escrow Agent to dispense pursuant to this Agreement. The Escrow Agent, upon receipt of written confirmation by the Project Director of the City's approval of the invoice(s) for Pass-Through Payments submitted to the City pursuant to Section 3.b. herein, shall dispense such amounts as the City instructs to the appropriate parties.

b. Invoicing for Fees and Expenses and Pass Through Payments:

(i) Contractor Fees and Expenses: Contractor shall submit invoices for Contractor and Sub-Contractor services to the Project Director as needed. For fees earned by the Contractor, all invoices will specify the work performed, the time to perform the work, and the rate at which the work is being charged. Such invoices shall reflect the Contractor's actual hours, sub-Contractor costs, total expended to date on each assigned project, additional and special services costs

and reimbursable costs, and shall be based on the hourly rates or other rates for services contained in **Exhibit B**. The Contractor shall maintain hourly records of the time worked by its personnel and sub-Contractors, records of all permissible reimbursable expenses and records of expendable supplies and services as necessary for any audits by the City, and shall bill the City monthly for fees and costs accrued during the preceding month. The Director or the Project Director will review and approve all invoices prior to payment by the Escrow Agent to the Contractor.

- (ii) Pass Through Expenses: For Pass Through Expenses incurred by the Peoria Project to be paid through the Escrow Agent as outlined in subsection (a)(ii) above and as set forth in **Exhibit A**, such as just compensation, purchase prices, invoices from persons hired by owners and tenants as provided for by state and federal law and all related acquisition and court costs, the Contractor shall provide written documentation as required by the Project Director including the form of Purchase and Sale Agreement, Permanent Easement, Temporary Construction Easement, Deed, Immediate Possession Order, Rule and Decree, invoices from persons hired by owners and tenants and other appropriate documentation as requested by the Project Director. The Project Director will review and approve all invoices prior to payment by the Escrow Agent of such Pass-Through Expenses.

(iii) In addition, Escrow Agent shall document and tabulate each invoice for Contractor services and Pass Through Expenses with the funds that are held in the Escrow Account so as to keep a balanced total for Peoria Project accounting purposes (“Escrow Account Reconciliation”). Escrow Agent shall send such Escrow Account Reconciliation to the project Director on at least a monthly basis and upon reaching a point where the funds remaining in the Escrow Account are not sufficient to pay the expenses expected in the next two months. The Project Director shall work with the Contractor and Escrow Agent to ensure that additional funds are received into the Escrow Account.

c. **Maximum Contract Liability:** Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Contractor under the terms of this Agreement for any amount in excess of Thirteen Million Dollars (\$13,000,000.00). The Contractor acknowledges that the City is not obligated to execute any other Agreement or an amendment to this Agreement for any further services and that any services performed by Contractor beyond that specifically described in the Scope of Work described above are performed at Contractor’s risk and without authorization under this Agreement.

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

4. **STATUS OF CONTRACTOR:** The Parties agree that the status of the Contractor shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1E(x) of the Charter of the City. It is not intended, nor shall it be construed, that the Contractor or its

employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

5. TERMINATION:

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

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

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

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

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

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

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

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

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

8. INSURANCE:

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

shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor 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 Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(B) **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor 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 Contractor'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, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

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

(E) **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement, but not independent entities not doing work for the City, but rather

those entities that must be paid pursuant to state statute or judicial order, which is paid out of the Escrow Account) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

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

(G) **Commercial General Liability:** Contractor 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:** Contractor 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) **Excess/Umbrella Liability:** Contractor shall maintain excess liability limits of \$2. Coverage must be written on a "follow form" or broader basis. Any combination of primary and excess coverage may be used to achieve required limits.

(J) **Additional Provisions:**

(a) For Commercial General Liability and Excess Liability, the policies must provide the following:

(i) That this Agreement is an Insured Contract under the policy;

- (ii) Defense costs are in excess of policy limits;
 - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (b) For claims-made coverage:
- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- (c) 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.

9. INDEMNIFICATION:

a. Contractor 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 Contractor 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. Contractor’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. Contractor’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. Contractor 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 Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

f. For matters concerning only the Pass-Through Payments, Contractor shall 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 resulting from the Pass-Through Payments in which the Contractor is negligent.

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

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

12. ASSIGNMENT AND SUBCONTRACTING:

A. The Contractor agrees that it will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the Director. A

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

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

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

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

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

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

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

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

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

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

City : Director of Real Estate
201 West Colfax Avenue, Dept. 1010
Denver, Colorado 80202
Attn: Steve Wirth

Contractor: H.C. Peck and Associates, Inc.
4001 Fox Street

Denver, Colorado

80216

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

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

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

21. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of services under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. The Contractor agrees to insert the foregoing provision in all subcontracts hereunder.

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

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

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

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

26. SURVIVAL OF CERTAIN PROVISIONS: The Parties agree that all terms and conditions of this Agreement, together with any exhibits and attachments, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement, by expiration of the term or otherwise, shall survive termination and shall continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

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

28. 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 Contractor 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 Contractor also agrees and represents that:

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

after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

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

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor 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 Contractor 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 Contractor from submitting bids or proposals for future contracts with the City.

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

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

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

32. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Contractor 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.

Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: FINAN-201207051-00

Contractor Name: HC Peck & Assoc., Inc.

By: *J E Parker Jr*

Name: J E PARKER JR
(please print)

Title: EXECUTIVE VICE PRESIDENT
(please print)



ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



H.C. Peck & Associates

Peoria Crossing Scope of Work

July 26, 2012

This Scope of Work is predicated on assumptions as of 7/25/12 - 11 total acquisitions and 24 partial/permanent/temporary easement acquisitions and 13 commercial relocations in both Denver and Aurora. If no agreement is reached to acquire the property, a condemnation action will be filed with the appropriate district court. All activities will be performed in strict compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, under the oversight of the Colorado Department of Transportation (CDOT), as directed by the City & County of Denver in conjunction with the City of Aurora.

1. Create and maintain project scheduling information of all land activities to show progress of each parcel and to estimate segment completion against established milestone schedules.
2. Attend project meetings and coordinate tasks with, City & County of Denver, City of Aurora, Project engineers, CDOT, project appraisers, and others involved and/or affected by the project.
3. Coordinate the appraisal and review appraisal process, title services, and row plans & legal descriptions for all parcels. Review all documents in preparation for negotiation.
4. Have each parcel appraised using guidelines established by CDOT appraisal manual. (Anticipate 35 Ownerships & 2 Billboards over \$5000)
5. Coordinate obtaining the FMV on each property, ROW Plan approval, ROW clearance and other approval needed from CDOT and/or FHWA.
6. Prepare value findings if necessary and appropriate.
7. Coordinate the preparation, execution and delivery of all offer letters and summary of just compensation, last written offer letters, conveyance documents, and any additional correspondence with each property owners and tenant.
8. Conduct negotiations with each owner for the acquisition of the property rights to be acquired based on the approved fair market value. These negotiations will be carried out in accordance with all applicable Federal and State laws and City & County of Denver and City of Aurora policies.
9. Obtain partial releases/subordinations and tax prorations; coordinate and attend real estate closings.
10. Complete Acquisition Stage Relocation Plan (7-B Study) of affected properties.

1. Interview relocatees to determine special relocation needs.
2. Search for availability of suitable replacement sites.
3. Determine if relocation can be accomplished in the time frame given.
11. Prepare Relocation Determinations, request payments, settle claims for moving costs.
12. Present approved moving benefits to each business and offer relocation assistance.
13. Secure 2 move estimates from Commercial Movers per relocatee.
14. Coordinate or provide property management, including utility shut offs, any required disconnects, secure each structure, contract security services, rekey locks as necessary, provide access to project personnel, weed and rodent control as needed, and any other task as directed by the City and County of Denver .
15. File closeout - QA/QC of all files with any and all necessary copies to appropriated partners and project personnel to secure row clearances, property real estate closings, and/or court proceedings.
16. Provide reimbursables associated with this scope of work, including reproduction costs (third party), recording, notary, license & permit fees, maps, mileage at the IRS reimbursement rate, delivery and express mail, parking and tolls, long distance telephone and fax costs.
17. Obtain all title commitments, title commitment updates, real estate closings including securing any necessary releases or subordination documents and associated costs. Title insurance will be provided based upon the property final settlement amount or as otherwise directed by the City and County of Denver.
18. Litigation attorneys and litigation support including project appraiser, project negotiator, expert witnesses, exhibits, etc. for any eminent domain actions associated with this project.
19. Provide appropriate documentation for approval and, upon approval, pay all required payments related to acquisition of ROW for the project, including but not limited to: Project appraisers and other consultants, owner's appraisers and other consultants, utility bills, associated real estate closing expenses, court and litigation costs, recording fees, title commitment and policy fees, purchase prices, relocation payments as described herein, just compensation, immediate possession payments and all other payments related to ROW acquisition as directed by the City and County of Denver.
20. Provide an escrow account funded by the project to pay for all matters associated with this Scope of Work and the acquisition of the Project ROW. Funds will only be paid out of the Escrow Account in accordance with the Escrow Instruction Letter.

HC PECK FEE SCHEDULE - 2012

<u>Personnel Classification</u>	<u>Rate per Hour</u>
Principal	\$115.50
Senior Project/Quality Manager	\$103.95
Project Manager	\$ 97.02
Senior Right of Way Agent	\$ 84.89
Right-of-Way Agent III	\$ 77.62
Right-of-Way Agent II	\$ 65.49
Right-of-Way Agent I	\$ 55.79
Support Staff	\$ 48.51

Title Insurance Services

Title Commitment (includes 5 hours research)	\$455.00 each
Extensive Research or Title Research	\$91.25 per hour
Title Updates	\$180.00 each
Recording	\$At cost
Closing Fees	
Commercial	\$365.00
Residential	\$275.00
Acquiring documents from County Records	\$91.25 per hour
Or other Governmental Agencies	\$91.25 per hour
Securing Partial Releases	\$91.25 per hour

*Title Insurance per published Underwriters Rates on date of issuance

Reimbursable Expenses

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

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

*Cost plus Actual Administrative Fee

ACORD Client#: 52033
CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 09/28/2012

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

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

PRODUCER
 Willis of Colorado, Inc.
 2000 South Colorado Boulevard
 Tower II, Suite 900
 Denver, CO 80222

INSURED
 H.C. Peck & Associates, Inc.
 P O Box 480306
 Denver, CO 80248-0306

INSURER A: Hartford Insurance Group
 NAIC # 29424

INSURER B:
 INSURER C:
 INSURER D:
 INSURER E:
 INSURER F:

CONTACT
 NAME: Virginia (Ginny) Shaw
 PHONE (A/C, No, Ext): 303-765-1572
 FAX (A/C, No): 720-524-0130
 E-MAIL ADDRESS:

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	ADDRESS	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	34UNRA8992	01/25/2012	01/25/2013	\$1,000,000	COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR A/I #HG0001 0605 POLICY PRO-JECT <input checked="" type="checkbox"/> POLICY LOC
A	AUTOMOBILE LIABILITY	34UNRA8992	01/25/2012	01/25/2013	\$1,000,000	ANY AUTO <input checked="" type="checkbox"/> ALL OWNED <input checked="" type="checkbox"/> AUTOS <input checked="" type="checkbox"/> SCHEDULED <input checked="" type="checkbox"/> NON-OWNED <input checked="" type="checkbox"/> AUTOS <input checked="" type="checkbox"/> HIRED AUTOS
A	UMBRELLA LIAB	34RHUA8342	01/25/2012	01/25/2013	\$2,000,000	<input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS-MADE EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$10000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	34WEKA5069	01/25/2012	01/25/2013	\$1,000,000	ANY PROPERTY/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH)
	E.T. DISEASE - EA EMPLOYEE				\$1,000,000	
	E.T. DISEASE - POLICY LIMIT				\$1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 The following are Additional Insureds as respects General Liability and Umbrella Liability only if required by written contract and coverage applies only as respects work performed by the insured for the Additional Insureds. All coverage terms, conditions and exclusions of the policy apply.
 (See Attached Descriptions)

CERTIFICATE HOLDER

City and County of Denver
 Manager of Asset Management
 201 West Colfax Avenue
 Denver, CO 80202

AUTHORIZED REPRESENTATIVE
 Virginia H. Shaw

CANCELLATION

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

DESCRIPTIONS (Continued from Page 1)

The following are Additional Insureds on the Automobile Liability only to the extent they meet the definition of an insured in the policy, which provides in pertinent part that an insured includes anyone liable for the conduct of an insured but only to the extent of that liability. All coverage terms, conditions and exclusions of the policy apply. Consult the policy to determine the extent of coverage, if any.

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

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

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

The Additional Insured endorsement which is referenced above under "Type of Insurance-General Liability" is attached.