

ON CALL PROFESSIONAL SERVICES AGREEMENT

between

THE CITY AND COUNTY OF DENVER
and
DOWNTOWN DENVER BUSINESS IMPROVEMENT DISTRICT

THIS AGREEMENT is made and entered into as of the Effective Date (as hereinafter defined) between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and the **DOWNTOWN DENVER BUSINESS IMPROVEMENT DISTRICT (DDBID)**, a quasi-municipal corporation and political subdivision of the State of Colorado, created pursuant to Part 12, Article 25 of Title 31 of the Colorado Revised Statutes and by enabling ordinance of the City (the “Consultant”), whose address is 1515 Arapahoe St., Tower 3, Suite 100, Denver, Colorado 80202. The City and the Consultant are sometimes referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

1. The City wishes to secure planning, implementation, procurement, management and related services (“Program Management Services”) to identify, acquire, store and install (the “Program”) certain furnishings, fixtures and equipment (the “FF&E”) to support the 16th Street Transit and Pedestrian Mall Renovation Project (the “Project”) on an "as needed" basis; and

2. The Consultant represents that it has the present capacity, experience and qualifications to perform professional Program Management Services for the City; and

3. The Consultant and the City have jointly prepared and negotiated a “Scope of Services” and Rates for such Program Management Services, copies of which are 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 Program 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 Line of Authority for Contract Administration. The City's Executive Director of the Department of Transportation and Infrastructure ("Manager") is the City's representative who is responsible for authorizing and approving the Work (as hereinafter defined) performed under this Agreement. The Manager hereby designates the City Engineer as the Manager's authorized representative for the purpose of issuing a written Notice to Proceed and administering, coordinating and initially approving the services performed by the Consultant under this Agreement. The City shall designate a project manager for the Program (the “Project Manager”), who reports to the City Engineer shall be responsible for the day-to-day administration, coordination and approval of services performed by the Consultant, except for approvals that are specifically identified in this Agreement as requiring the Manager's approval.

1.03 Independent Contractor. The Consultant is an independent contractor retained to perform 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, or for any purpose whatsoever.

1.04 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 Denver Revised Municipal Code ("DRMC").

SECTION 2 – CONSULTANT'S SERVICES

2.01 General. The Consultant shall provide professional Program Management Services as assigned by written task order (a "Task Order"), on an as-needed basis, in accordance with the terms and conditions of this Agreement. The City may provide project management, financial analysis, FF&E procurement, or other services for the Program, but desires management and procurement oversight of the overall Program and access to Program Management Services on an as needed basis.

2.02 Anticipated Projects and Tasks. The City anticipates that the Program will include the planning, implementation, procurement, management and related services to identify, acquire, store and install the furnishings, fixtures and equipment (the "FF&E") to support the Project. The FF&E elements may be added or removed at the written direction of the Project Manager.

2.03 Professional Responsibility and Task 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 similar nature 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 in compliance with applicable laws, statutes, codes, ordinances, rules and regulations, and industry standards.
- (c) All professional services or deliverables provided under this Agreement shall be adequate and sufficient for their intended purpose.
- (d) The Consultant shall prepare all documents as requested in a format that complies with all City, state and federal requirements. No documents will be considered final until approved by the City.
- (e) The reports, studies and other products prepared by the Consultant under this Agreement, when submitted by the Consultant to the Project Manager and the user agency must represent a thorough study and competent solution as per usual and customary professional standards and shall reflect all skills applicable to the assigned task.
- (f) 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.
- (g) The Consultant shall provide all Program Management 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/subcontractors, without additional compensation.

- (h) The Consultant shall only take direction from authorized City employees. On a day-to-day basis, this will be the Project Manager. Consultant shall not direct that any changes be made to the plans or specifications without the written approval of the Project Manager.
- (i) Consultant will notify the Project Manager by email within 48 hours, or as soon as practicable thereafter, of all communications (in-person meetings, telephone calls, emails, texts or written communication, etc.) regarding the Project including all communications with partner entities or members of the City team.

2.04 Program and Budget. Each Task Order proposal will include a maximum fee. The Consultant agrees to complete the Work included in the Task Order within the limits of the approved Task Order.

2.05 Coordination and Cooperation.

- (a) The Consultant agrees to perform under this Agreement in such a manner and at such times that the City can reasonably do so without unreasonable delay.
- (b) Coordination with the City and other involved agencies shall be a continuing Work item through for each approved Task Order. Coordination shall consist of regular progress and review meetings with the Project Manager, work sessions with Project Managers, or other coordination as directed. If requested, the Consultant shall document conferences and distribute notes to the City.

2.06 Personnel Assignments.

- (a) The key professional personnel identified in **Exhibit B** will be assigned by the Consultant or its contractors (hereinafter “subconsultants” or “subcontractors”) to perform the services required under this Agreement, as appropriate.
- (b) The Consultant’s Program Management Services shall be diligently performed by the regular professional and technical staff of the Consultant or its subconsultants/subcontractors.
- (c) The Consultant agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to personnel through subconsultants/subcontractors who are not on Consultant’s payroll in sufficient strength 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 for the Program Management Services to be performed in the appropriate hourly rate schedule, together with the cost of the FF&E elements to be procured, as 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/subcontractor, together with a resume of training and experience in work of like character and magnitude of the task being contemplated, to the City and receive prior approval in writing.
- (e) It is the intent of the Parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that the Consultant’s key professional personnel as identified on **Exhibit B** hereto be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of Work performed hereunder.

- (f) If the Consultant decides to replace any of its key professional personnel, the Consultant shall notify the Project Manager 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 Project Manager, which approval shall not be unreasonably withheld.
- (g) If, during the term of this Agreement, the Manager determines that the performance of approved key personnel or a subconsultant/subcontractor is not acceptable, the Manager shall notify the Consultant and give the Consultant the time which the Manager considers reasonable to correct such performance. Thereafter, the Manager may require the Consultant to reassign or replace such key personnel. If the Manager notifies the Consultant that certain of its key personnel or a subconsultant/subcontractor should be replaced, Consultant will use its best efforts to replace such key personnel or a subconsultant/subcontractor within ten (10) days from the date of the Manager's notice.
- (h) Neither the Consultant nor any subconsultant/subcontractor shall have other interests which conflict with the interests of the City. Consultant shall make written inquiry of all of its subconsultants/subcontractors 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/subcontractor.
- (i) Actions taken by the City under this Agreement shall not relieve the Consultant of its responsibility for contractual or professional deficiencies, errors or omissions.
- (j) The Consultant shall submit to the Manager a list of any additional key professional personnel who will perform Work under this Agreement within thirty (30) days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks which may be assigned. Such additional personnel must be recommended by the Consultant and approved by the Manager before they are assigned to a specific Task Order.
- (k) The Manager shall respond to the Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the Manager receives the list of changes. If the Manager or his designated representative does not respond within that time, the changes shall be deemed to be approved.

2.07 Basic Services.

- (a) The Consultant shall, under the general direction of and at the written request of the Manager, furnish experienced personnel to support the Program and deliver the Program Management Services. Subject to an express, agreed upon limitation of such duties set forth in any approved Task Order for the particular task 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 approved Task Order issued hereunder.
- (b) When directed by the Project Manager to perform a particular task, the Consultant shall prepare a task specific proposal in accordance with the scope or description of Work for that task. A separate task specific proposal shall be prepared for each task for which the Consultant's services are required and shall set forth, at a minimum all of the following:
 - (1) The maximum fee for the Consultant's proposed services.
 - (2) Itemized fee breakdown.
 - (3) The additional services budget, if any, for the task.
 - (4) Any reimbursable expenses approved pursuant to paragraph 3.02.

- (5) A detailed description of the task and scope of work (the “Work”).
- (6) A list of deliverables for the task, including the cost of the FF&E elements to be procured in connection with the task.
- (7) An agreed upon schedule for deliverables and completion of the Work.
- (c) Upon approval by the Manager of a task proposal, the approval and appropriation of funding for such task, and the issuance of a written Notice to Proceed, the Consultant shall proceed to perform the Work described in the approved Task Order.
- (d) The assigned task shall be performed in conformance with the approved Task Order. The terms of this Agreement cannot be altered by Task Order.
- (e) The Consultant's basic services for each task 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 obtain written authorization from the City in the form of a Notice to Proceed before proceeding with each assigned Task Order.
- (g) Nothing in this Agreement shall be construed as placing any obligation on City to proceed with any task beyond the latest task 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 tasks assigned under this Agreement.
- (h) 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.

SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING

The City shall compensate the Consultant for its Program Management Services performed and expenses incurred under this Agreement and each Task Order as follows:

3.01 Basic Compensation. The City agrees to pay the Consultant, as compensation for any services rendered for a particular task, either the maximum fee, to be set forth in each approved Task Order, 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 or specified in **Exhibit B**, the City will not compensate the Consultant for expenses such as postage, travel, mileage, parking, telephone, 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 in proportion to the progress of the Work on each assigned Task Order. Such invoices shall reflect the Consultant's actual hours, sub-consultant 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 amendment executed in the same manner as this Agreement. The Consultant shall maintain contemporaneous hourly records of the

actual hours worked by its personnel and subconsultants/subcontractors, 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 City's Project Manager, and approval by the City, payment shall issue. Final payment to the Consultant, for each assigned Task Order, shall not be made until after all Task Order Work is performed and all deliverables are delivered.

3.05 Maximum Contract Amount.

- (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 **FOUR MILLION DOLLARS AND NO CENTS (\$4,000,000.00)**. 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 approved Task Order, at the time it executes each Task Order. The Manager or his 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 Task Order.
- (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 Task Order to exceed the amount appropriated for that Task Order is prohibited. In no event shall the issuance of any change order or other form of order or directive by the City be considered valid or binding if it requires additional compensable Work to be performed, which Work will cause the aggregate amount payable for such Work to exceed the amount appropriated and encumbered, unless and until such time as the Consultant has been advised in writing by the Manager that a lawful appropriation sufficient to cover the entire cost of such additional Work, has been made. It shall be the responsibility of the Consultant to verify that the amounts already appropriated for the Consultant's Work on a task are sufficient to cover the entire cost of such Work, and any Work undertaken or performed in excess of the amount appropriated is undertaken or performed in violation of the terms of this Agreement, without the proper authorization for such Work, and at the Consultant's own risk and sole expense.

SECTION 4 – TERM AND TERMINATION

- 4.01 Term. The term of this Agreement shall be five (5) years, commencing on the Effective Date and expiring on the fifth (5th) anniversary of the Effective Date, unless sooner terminated or extended

by written amendment. The Consultant shall complete any Task 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 Manager.

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 Manager.
- (b) The Manager may terminate this Agreement for cause at any time if the Consultant's services become unsatisfactory, in the sole discretion of the Manager. 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 cost in excess of what the City would have paid the Consultant had there been no termination for cause.
- (d) Either the City or the Consultant may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) days' prior written notice to the other, 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 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 – GENERAL PROVISIONS

5.01 City's Responsibilities.

- (a) The City will provide available information regarding its requirements for each task, including related budgetary information, and shall cooperate with the Consultant. 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 insufficient.
- (b) If the City observes or otherwise becomes aware of any fault or defect in the task it will give prompt notice thereof to Consultant.

5.02 Ownership of Documents.

- (a) The City shall have title and all intellectual and other property rights, in and to all phased and final documents and deliverables, and all data used in the development of the same, including 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 for which the Documents were created is executed or not. The Consultant shall identify and disclose, as requested, all such Documents to the City.
- (b) To the extent permitted by the U.S. Copyright Act, 17 USC § 101 et seq., as the same may be amended from time to time, the Documents are a "work made for hire," and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a "work made for hire," the Consultant hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.
- (c) The Consultant shall provide (and cause its employees and subconsultants/subcontractors to provide) all assistance reasonably requested in securing for the City's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City's name, all rights to such Documents.
- (d) The Consultant agrees to allow the City to review any of the procedures used in performing the Work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder.
- (e) The 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 shall be delivered to the City promptly upon completion thereof, or if authorized by the City's Project Manager, upon termination or expiration of this Agreement.

5.03 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 Project Manager, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes. The 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.

5.04 Consultant's Records and Examination of 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 Section 5.04 shall require Consultant to make disclosures in violation of state or federal privacy laws. Consultant shall at all times comply with DRMC Section 20-276.

5.05 Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than the Consultant named herein. With the exception of those listed on **Exhibit B** and except as otherwise provided in this Agreement for the approval of subconsultants/subcontractors, 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.

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

5.07 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, 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, Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Consultant. Consultant shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant. The Consultant

shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- (b) Proof of Insurance. Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant may not commence services or Work relating to the Agreement prior to placement of 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, Auto Liability and Excess Liability/Umbrella (if required), Consultant and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- (d) Waiver of Subrogation. For all coverages required under this Agreement, with the exception of Professional Liability - if required, Consultant'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) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Consultant. Consultant shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Consultant agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
- (f) Workers' Compensation/Employer's Liability Insurance. Consultant (if providing its own employees to perform the services hereunder), and its subconsultants/subcontractors shall maintain the coverage as required by statute for each Work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Consultant expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Consultant's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Consultant executes this Agreement.
- (g) Commercial General Liability. Consultant shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

- (h) Business Automobile Liability. Consultant shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- (i) Additional Provisions.
 - (1) For Commercial General Liability, the coverage must provide:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs are outside the limits of liability;
 - (ii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (iii) 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.

5.08 Indemnification.

- (a) To the fullest extent permitted by law, the Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the Work performed under this Agreement that are attributable to the negligence or fault of the Consultant or the Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City, recognizing that Consultant is itself a public entity and political subdivision of the State of Colorado and thus subject to limitations under Colorado law on its ability to provide indemnification.
- (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 suit has been filed and even if Consultant is not named as a Defendant.
- (c) Consultant will, to the extent permitted by law, 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.

5.09 Colorado Governmental Immunity Act. The Parties hereto understand and agree that the City and Consultant are relying upon, and have not waived, the monetary limitations (presently \$424,000 per person, \$1,195,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

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

Exhibit A	Consultant's Scope of Work
Exhibit B	Consultant's Rates & Reimbursable Expenses
Exhibit C	ACORD Insurance Certificate

In the event of an irreconcilable conflict between a provision of Sections 1 through 5 and the listed attachments, or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in descending order:

Sections 1 through 5
Exhibit A
Exhibit B
Exhibit C

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

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

5.13 Conflict of Interest.

- (a) The 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 tasks. In the event that Consultant fails to disclose in writing actual or potential conflicts, the Manager, in his 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 Revised Municipal Code 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.

5.14 No Third Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the 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.

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

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

5.17 Proprietary or Confidential Information.

- (a) City Information. The 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. The City 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 Consultant for disclosure of such information, the Consultant shall advise the City of such request in order to give the City 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 Consultant will tender all such material to the court for judicial determination of the issue of disclosure and the City 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 City further agrees, to the extent allowed under Colorado law, to defend, indemnify and save and hold harmless the Consultant, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the City's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the Consultant of all reasonable attorney fees, costs and damages that the Consultant may incur directly or may be ordered to pay by such court.

- (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 the extent allowed under Colorado law, 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.

5.18 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.

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

5.21 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.”

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

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

5.24 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 the Department of Transportation and Infrastructure 201 West Colfax Avenue, Dept. 608 Denver, Colorado 80202
with a copy to:	Assistant City Attorney 201 West Colfax Avenue, Dept. 1207 Denver, Colorado 80202
to the Consultant:	Downtown Denver Business Improvement District 1515 Arapahoe Street, Tower 3, Suite 100 Denver, CO 80202
with a copy to:	Spencer Fane, LLP ATTN: Ron Fano 1700 Lincoln Street, Suite 2000 Denver, CO 80303

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.

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

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

5.28 Electronic Signatures. 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. As used herein, the "Effective Date" shall mean the date appearing on the City's fully-executed signature page.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

Contract Control Number:
Contractor Name:
DISTRICT

DOTI-202367420-00
DOWNTOWN DENVER BUSINESS IMPROVEMENT

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:

Attorney for the City and County of Denver

By: _____


REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number:
Contractor Name:
DISTRICT

DOTI-202367420-00
DOWNTOWN DENVER BUSINESS IMPROVEMENT

By:  _____
DACB4442332E4B1...

Name: Jodi Janda

(please print)

Title: Downtown Denver Business Improvement - Chair

(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

[Scope of Work – Description of FF&E]

The Downtown Denver Partnership shall work with the City design team to procure and install furnishings for the 12.5 blocks of the 16th St. Mall Redevelopment project. These items are anticipated to include the following items:

- Benches
- Trash/recycling receptacles
- Bike Racks
- Café tables and chairs
- Planter pots
- Landscape Materials for pots (Planting soil/Annuals/perennials)
- Lounge chairs
- Picnic Tables
- Signature Signage Elements (optional)

Task 1: Phasing Packages: This task is to identify the elements and budgets for up to 5 packages of furnishings that correspond with the block completion/opening schedule for the Mall. The packages will include estimated procurement and installation costs for each package to help the City and Consultant plan expenditures for the duration of the Mall implementation. Subtasks and deliverables include:

1. Coordinate with the City design team to identify up to 5 FF&E packages of furnishings the FF&E palette that correspond with the block completion/opening schedule (led by the City's Project Manager). Each FF&E package will include an itemized furnishing schedule, detailed specifications (color, material, specifications and similar elements), and vendor quotes detailing unit and delivery costs for review and approval by the Project Manager.
2. Provide the City and delivery and installation schedule that can be coordinated with the overall Project schedule.
3. FF&E Installation Costs: For each FF&E package, the Consultant shall provide an estimate of installation costs.
4. Planting Installation Costs: For each FF&E package, the Consultant shall provide an estimate of planter installation costs, including plant materials, soil and other necessary elements.

Task 2: Procurement and Installation: The purpose of this task is to order and install FFE elements in accordance with the approved FFE packages and budgets. DDP will procure, store and install all FFE elements. Detailed subtasks/deliverables include:

1. Final order quote and specification shall be submitted for City review and approval prior to purchase.
2. Receiving delivery of FFE elements, and installation per vendor specifications

Task 3: Signature wayfinding/brand signage (optional): At the City's request and as funding is determined, DDP will work with the City Team to identify up to 5 signature Mall signage elements. DDP shall work with the City to identify a designer/fabricator(s) for this element. Detailed subtasks/deliverables include:

1. Preliminary design and cost estimate
2. Final design including detailed specifications (color, material etc), architect/engineered/shop drawings and vendor quotes detailing unit and delivery costs
3. Installation costs.

EXHIBIT B

CONSULTANT TEAM MEMBERS

Prime Consultant: Downtown Denver Partnership

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

Title/Classification	Responsibilities	Rate/Hr.
Principle in Charge		\$105
Planner		\$86
Designer		\$86
Procurement PM		\$72
Procurement Coordinator		\$45

The City will not compensate for expenses such as postage, mileage, parking, or telephone costs. Reproduction, if requested by the City, shall be reimbursed at actual cost if approved in advance by Project Manager. Such costs are, in all such instances, included in the hourly rates paid by the City. Reproduction of submittals requested by the City including such items as end-of-phase reports, drawings, bid documents, record drawing reproducibles, etc. are not included in the hourly rates, and will be itemized as a not-to-exceed reproducible expense and will be reimbursed at actual cost.

EXHIBIT C



CERTIFICATE OF COVERAGE

Certificate Number
CERT-009932

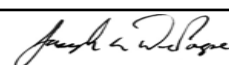
ADMINISTRATOR Colorado Special Districts Property and Liability Pool c/o McGriff Insurance Services, LLC PO Box 1539 Portland, OR 97207-1539	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
NAMED MEMBER Downtown Denver Business Improvement District 1515 Arapahoe St. Denver, CO 80202	COMPANIES AFFORDING COVERAGE COMPANY A: Colorado Special Districts Property and Liability Pool COMPANY B: COMPANY C: COMPANY D:

COVERAGES

THIS IS TO CERTIFY THAT COVERAGE DOCUMENTS LISTED HEREIN HAVE BEEN ISSUED TO THE NAMED MEMBER HEREIN FOR THE COVERAGE 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 COVERAGE AFFORDED BY THE COVERAGE DOCUMENTS LISTED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH COVERAGE DOCUMENTS.

CO LTR	Type of Coverage	Coverage #	Effective Date	Expiration Date	LIMITS	
A	General Liability	23PL-60669-3219	01/01/23	12/31/23	General Aggregate	Unlimited
	<input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Public Officials Liability <input checked="" type="checkbox"/> Employment Practices <input checked="" type="checkbox"/> Occurrence	*Except that for claims, occurrences or suits to which the monetary limits of the Colorado Immunity Act, C.R.S. & 24-10-101, et seq., as amended, apply, there shall be a further sublimit of (a) \$424,000 for an injury to any one person in any single occurrence; and (b) \$1,195,000 for an injury to two or more persons in any single occurrence; but in the event of an injury to two or more persons in any single occurrence, the sublimit shall not exceed \$424,000 for each injured person.			Each Occurrence*	\$2,000,000
A	Automobile Liability	23PL-60669-3219	01/01/23	12/31/23	Each Occurrence*	\$2,000,000
	<input type="checkbox"/> Scheduled Autos <input checked="" type="checkbox"/> Hired Autos <input checked="" type="checkbox"/> Non-Owned Autos					
	Auto Physical Damage					
	<input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos					
A	Excess Liability	23PL-60669-3219	01/01/23	12/31/23	General Aggregate	Unlimited
	<input checked="" type="checkbox"/> Other Than Umbrella Form				Each Occurrence*	\$4,000,000
	Property					
	<input type="checkbox"/>					

Description:
The City and County of Denver, its elected and appointed officials, employees and volunteers are listed as additional covered members under General Liability, Auto Liability, and Excess Liability, which shall apply on a primary non-contributory basis, as outlined under written contract. Only those liabilities covered by the Pool's coverage document for the Member District shall apply, subject to the provisions and limitations contained in the Colorado Governmental Immunity Act C.R.S. 24-10-101, as amended. Waiver of Subrogation in favor of the City and County of Denver shall apply under the General Liability, Auto Liability, and Excess Liability as required under contract. Should any of the described coverages be cancelled before the expiration date thereof, 30 days' notice shall be delivered in accordance with the coverage's cancellation provision.

CERTIFICATE HOLDER Executive Director of the Dept. of Transportation 201 West Colfax Avenue, Dept. 608 Denver, CO 80202	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED COVERAGES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE COVERAGE FORM PROVISIONS. AUTHORIZED REPRESENTATIVE: By: Joseph E. DePaepe  Date: April 13, 2023
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