

**ON CALL
TECHNOLOGY MASTER SERVICES
AGREEMENT**

THIS AGREEMENT (“Agreement”), effective as of the last signature date below (“Effective Date”), is by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **ACCELA, INC.**, a California corporation, whose address is 2633 Camino Ramon, Suite 120, San Ramon, CA 94583 (the “Accela”). Each party may be individually referred to as a “Party” or collectively as the “Parties.”

WHEREAS, the City desires to contract with an information technology consultant; and

WHEREAS, Accela is qualified and ready, willing and able to perform the services as set forth in this Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. SCOPE OF SERVICES; ORDER:

1.1 Accela, under the general direction of, and in coordination with City’s Chief Information Officer, or other designated supervisory personnel (the “Manager”), shall diligently perform any and all authorized services required under this Agreement. Accela may provide specialized professional services including configuration, conversion, upgrade, data extraction, diagnostic, training and/or other skilled services (collectively “**Professional Services**” or “services” or “Services”) as set forth in the applicable order form and/or Statement of Work executed by Accela and City (each an “**Order**” or “**SOW**”). Each Order will include, at a minimum: (i) a description of the Professional Services and any deliverables and/or materials to be provided to City (each, a “**Deliverable**”); (ii) scope of the Professional Services; (iii) applicable fees and payment terms for such Professional Services, if not elsewhere specified; and (iv) identify the governing agreement. Accela agrees that during the term of this Agreement it shall use commercially reasonable efforts to coordinate its provision of the services with any person or firm under contract with the City doing work or providing services which affect Accela’s services. Accela shall faithfully perform the work in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in this Agreement. Accela represents and warrants that all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards and will conform to applicable specifications for a period of ninety (90) days following acceptance of such services. For the avoidance of doubt, any warranty hereunder will be in effect for a period of ninety (90) days from acceptance of any Services, and Accela’s entire liability will be the re-performance of the non-confirming Services.

1.2 **DISCLAIMER.** This Agreement sets forth the sole and exclusive warranties and remedies related to the Services and Deliverables performed or provided under this Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACCELA DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. EXCEPT AS PROVIDED HEREIN, THE SERVICES AND DELIVERABLES PROVIDED TO CITY ARE ON AN “AS IS” AND “AS AVAILABLE” BASIS.

1.3 **Acceptance and Nonconformance.** City is responsible for reviewing and testing all Deliverables in accordance with each Order pursuant to any acceptance criteria or test plans mutually agreed upon in writing by the parties for a Deliverable within the mutually agreed timeframes established in the project plan or schedule. City will provide Accela with written timely notification of acceptance for each Deliverable promptly upon acceptance; however, failure to reject a Deliverable, as set forth below, will be deemed acceptance. If City, in its reasonable and good faith judgment, determines that any submitted Deliverable does not satisfy the agreed-upon acceptance criteria as specified in the applicable SOW or as mutually agreed upon in writing by the parties for such Deliverable, City must so notify Accela in writing within ten (10) business days after Accela’s submission of the Deliverable along with notification of the submission to the project manager, specifying the deficiencies in detail. If City does not so notify Accela within ten business (10) days, the Professional Services will be deemed accepted. Accela will use commercially reasonable efforts to correct such deficiencies and resubmit the Deliverable to City as soon as practicable. City will again review and test the Deliverable against the agreed-upon acceptance criteria, and detail any deficiencies to Accela in writing within ten (10) business days after resubmission of the Deliverable. If a Deliverable fails to meet the acceptance criteria specified in the applicable SOW after its second resubmission to City, City may either, as its sole and exclusive remedy: (i) again reject the Deliverable and return it to Accela for further correction and resubmission in accordance with the process described above or (ii) terminate the rejected portion of the relevant SOW immediately upon written notice.

1.4 If the Deliverable is not accepted after two resubmissions and prior to instituting formal proceedings, the parties shall attempt to resolve all disputes arising out of or relating to this Agreement informally. To invoke this process, a Party shall appoint a designated executive and request that the other Party do the same. The other Party shall make such appointment within five (5) days of receipt of the request. The designated executives shall then have up to thirty (30) days to attempt in good faith to resolve the matter. The informal dispute resolution process shall terminate at the end of the thirty (30) day period unless extended by mutual written agreement, and the Parties may avail themselves of any remedies available at law or equity.

1.5 If City or Accela requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Order, the Party seeking the change will propose the applicable changes by written notice.

1.6 Within a reasonable amount of time (not to exceed four (4) business days in the case of implementation services) after receipt of written notice, each Party's designated personnel will meet, either in person or via telephone conference, to discuss and agree upon any proposed changes. Thereafter, Accela will prepare a change order describing the proposed changes to the Order and any associated changes in the Deliverables, Deliverable schedule, fees and/or expenses (each, a "**Change Order**").

1.7 Change Orders will not be binding until they are executed by both Parties. Executed Change Orders will be deemed part of, and subject to, this Agreement. If the Parties disagree about the proposed changes, they will promptly escalate the change request for dispute resolution as described in Section 1.4 of this Agreement.

1.8 In the event City requires significant changes to any Order (either individually or cumulatively across Change Order(s)) which Accela reasonably determines is (a) a material modification of the nature or scope of Professional Services being purchased and/or (b) significantly outside the supported modifications, Accela may, upon no less than thirty (30) days' notice to City, suspend or terminate the applicable Order(s) and/or Change Order(s). In the event of any such termination or suspension, the Parties will work together in good faith towards finalizing agreed-upon Deliverables. Unless otherwise expressly agreed to by the Parties at the time of any such material change, Accela will not be deemed to have waived any City payment obligations in respect of completed Deliverables.

1.9 Accela will own all rights, title and interest in and to the Deliverables (excluding any City Confidential Information provided to Accela for provisioning of the Professional Services).

1.10 Accela will have the right to use any City Confidential Information solely for providing the Professional Services to City hereunder. Notwithstanding the foregoing, Accela may use aggregate anonymized City Confidential Information for Accela development, internal training and other reasonable business purposes not specific to City or its End Users.

1.11 Deliverables are Accela Confidential Information and City may not reverse engineer, decompile, disassemble, translate, copy, reproduce, display, publish, create derivative works of, assign, sell, lease, rent, license or grant any interest in the Deliverables to any Party except as expressly permitted by Accela.

1.12 Subject to this Agreement, Accela grants City a limited, non-exclusive, nontransferable, perpetual (subject to the Parties' termination rights under this Agreement) license to use the Deliverables solely for City's internal operations in connection with authorized use of the applicable Software. This license shall only apply to Deliverables that are specifically developed for the City and not general professional services.

1.13 _Notwithstanding any other provision of this Agreement: (i) nothing herein is intended to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise (“**Tools**”) used by Accela to develop the Deliverables.

1.14 _Accela will own all rights, title and interest in and to the all processes, methods, procedures and know-how established or utilized by Accela in performance of the Professional Services. None of the Professional Services or Deliverables will be deemed to constitute work product or work-for-hire inuring to the benefit of City.

2. TERM: The term of this Agreement shall commence on August 1, 2018, and shall terminate on August 1, 2021, unless earlier terminated in accordance with the Agreement. The term of this Agreement may be extended for two (2) periods of one (1) year each, on the same terms and conditions (excluding pricing) by signed written amendment to this Agreement. For the avoidance of doubt, the Maximum Contract Amount (defined below) may be changed only by a duly executed written amendment to this Agreement.

3. COMPENSATION AND PAYMENT:

A. Fee: The City agrees to pay to Accela, and Accela agrees to accept as its sole compensation for its services rendered under this Agreement, the rates set forth on applicable Order(s) or other written agreement(s) signed by the Parties, which rates shall not exceed \$250 per hour for professional services during the initial three (3) year term of this Agreement. For the avoidance of doubt, the foregoing shall not include reimbursable expenses and materials.

B. Reimbursement Expenses: There are no reimbursable expenses allowed under this Agreement, including travel, unless approved in writing by the City prior to being incurred.

C. Invoicing: Unless otherwise agreed in writing signed by the Parties, Accela shall provide the City with a monthly invoice in a format and with a level of detail mutually acceptable to the Parties. The City shall pay any undisputed amounts in accordance with its obligations under the City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C.

D. Maximum Contract Liability:

(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable to pay for services rendered and expenses incurred by Accela under the terms of this Agreement for any amount in excess of **THREE MILLION DOLLARS (\$3,000,000.00)** (the “Maximum Contract Amount”). Accela acknowledges that the City is not

obligated to execute an agreement or an amendment to Accela for any further services and that any services performed by Accela beyond that agreed by the Parties in signed writing are performed at Accela's risk and without authorization under this Agreement.

(ii) 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 ACCELA: Accela is an independent contractor retained to perform professional or technical services for limited periods of time. As of the Effective Date, neither Accela 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.

5. TERMINATION:

A. Either Party has the right to terminate the Agreement with cause upon thirty (30) days' prior written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period.

B. Notwithstanding the preceding paragraph, either party may terminate the Agreement if the other Party 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 this Agreement. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

C. Upon termination of the Agreement without cause, the terminating Party shall have no claim against the other Party by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement. Any pre-paid fees will not be refunded.

6. INTELLECTUAL PROPERTY RIGHTS:

1. Subject to this Agreement and upon payment of fees due under an applicable SOW or Order, Accela grants City a limited, non-exclusive, worldwide, nontransferable, perpetual (subject to termination rights under this Agreement) license to use the Deliverables solely for City's internal operations in connection with authorized use of the

applicable Software. . This license shall only apply to Deliverables that are specifically developed for the City and not general professional services. Notwithstanding any other provision of this Agreement nothing herein is intended to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise (“**Tools**”) used by Accela to develop the Deliverables.

2. Proprietary Rights. As between the parties, Accela shall solely and exclusively own all right, title, and interest in the Professional Services, Deliverables, and Software, including all modifications, enhancements, and derivative works thereof and any other of Accela’s products or services, whether created by Accela or City, together with all intellectual property and other proprietary rights therein. City hereby makes all assignments necessary to accomplish the foregoing ownership.

3. Deliverables are Accela Confidential Information and City may not reverse engineer, decompile, disassemble, translate, copy, reproduce, display, publish, create derivative works of, assign, sell, lease, rent, license or grant any interest in the Deliverables to any Party except as expressly permitted by Accela.

4. Processes & Know-How. Accela will own all rights, title and interest in and to the all processes, methods, procedures and know-how established or utilized by Accela in performance of the Professional Services. None of the Professional Services or Deliverables will be deemed to constitute work product or work-for-hire inuring to the benefit of City.

5. In the event any language conflicting with this Section 6 is added to any SOW, Order or Change Order, the parties expressly agree that such statement will have no effect on Accela’s rights as set out herein.

7. CONFIDENTIAL INFORMATION:

A. Definition. As used herein, “**Confidential Information**” means any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of a Party (the “**Disclosing Party**”) to the other Party (“**Receiving Party**”) for purposes arising out of or in connection with this Agreement or an Order or SOW that: is marked “confidential” or “proprietary” at the time of disclosure or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, (iv) was independently developed by the Receiving Party or (v) constitutes aggregate data collected or generated by or on behalf of Accela regarding its products and services (for purposes of providing or improving its products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other reasonable business purposes) that does not contain any personally identifiable or Customer-specific information.

B. Protection. Except as otherwise permitted in writing by the Disclosing Party and subject to the other terms of this Agreement, (i) the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, and (ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who are legally bound to protect such Confidential Information consistent with the requirements of these Terms.

C. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest, limit, or protect the disclosure.

D. Customer's Confidential Information. Accela will have the right to use any Customer Confidential Information solely for providing the Professional Services to Customer hereunder. Notwithstanding the foregoing, Accela may use aggregate Customer Confidential Information for Accela development, internal training and other reasonable business purposes not specific to Customer or its End Users.

8. Accela's Information: The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, 7B C.R.S. (2003), and that in the event of a request to the City for disclosure of such information, the City shall advise Accela of such request in writing within five (5) business days of such request in order to give Accela the opportunity to object to the disclosure of any of its proprietary or confidential material.

9. EXAMINATION OF RECORDS: Accela agrees that any duly authorized representative of the City, including the City Auditor, shall have access to and the right to examine any books, documents, papers and records of Accela, involving transactions related to this Agreement upon not less than twenty (20) days' prior notice. This right shall survive for three (3) years after final payment is made under this Agreement.

10. 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.

11. PERSONNEL:

A. Accela shall submit to the Manager a list of personnel who will perform on-site services under an Order within thirty (30) days of full execution of such Order, and, to the extent allowable by law and contract and to the extent maintained in Accela's files, provide resumes of such personnel.

B. Accela shall use commercially reasonable efforts to retain all key personnel for the term of the Order. If Accela must replace any of its key personnel, it shall notify the Manager in writing of the changes. If during the term of the Agreement, the Manager determines that the performance of approved key personnel is not acceptable, he shall notify Accela as such in writing, and the Parties shall endeavor to resolve the issue to the Parties' mutual satisfaction.

C. To the extent applicable to Accela, Accela is prohibited from hiring any subcontractor that is currently debarred by the City in accordance with D.R.M.C. § 20-77.

12. INSURANCE:

A. **General Conditions:** Accela 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. Accela shall keep the required insurance coverage in force at all times during the term of the Agreement 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-"VII or better. Accela shall endeavor in good faith to notify the City in the event any of the above-described 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 and 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, Accela shall endeavor to 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. Accela 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 Accela. Accela 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: Accela shall provide a copy of this Agreement to its insurance agent or broker. Accela may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Accela certifies that the certificate of insurance attached as **Exhibit B**, 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 Accela'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 request additional proof of insurance, including but not limited to policies and endorsements.

C. Additional Insureds: For Commercial General Liability and Auto Liability, Accela and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured, but only to the extent of liabilities falling within Accela's indemnity obligations pursuant to the terms of this Agreement

D. Waiver of Subrogation: For, the Commercial General Liability, Auto Liability, and Workers' Compensation coverages, Accela's insurer shall, to the extent allowed by law, 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 coverages appropriate to the scope of services provided. . Accela agrees to make all commercially reasonable efforts to promptly provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: Accela 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. Accela expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of Accela's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance has effected such rejection as of the Effective Date].

G. Commercial General Liability: Accela 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: Accela 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. Technology Errors & Omissions including Cyber Liability: Contractor shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate

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 outside the limits of liability;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(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 endeavor to 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.

13. DEFENSE AND INDEMNIFICATION:

A. Accela agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for from and against all third-party

liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed by Contractor under this Agreement (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to 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 Accela 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. Accela’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. Accela’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. Accela will defend any and all third-party 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 Accela under the terms of this indemnification obligation. Accela 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. Accela will, at Accela's expense, indemnify, defend and hold harmless the City, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney’s fees and awarded damages) arising out of a third party claim that the Deliverables infringe, violate or misappropriate a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party (“Claim”). The City will promptly notify Accela in writing of any Claim and cooperate with Accela and its legal counsel in the defense thereof. Pursuant to foregoing, Accela shall, in its discretion, perform some or all of the following actions: (i) contest, (ii) settle, (iii) procure for the City the right to continue using the Deliverable, or (iv) modify or replace the infringing product so that it no longer infringes (as long as the functionality and performance are not materially degraded). To the extent mutually agreed by the Parties in writing, the City may participate in the defense of such action at its own expense. Accela’s indemnifications obligations set forth herein do not apply to the extent that a Claim arises out of (i) City’s breach of this Agreement; (ii) revisions to the Deliverable made without Accela’s written consent; (iii) City’s failure to incorporate updates

or upgrades that would have avoided the alleged infringement, provided Accela offered such updates or upgrades without charges not otherwise required pursuant to this Agreement; (iv) Accela's modification of the Deliverable in compliance with specifications provided by City; or (v) use of the Deliverable in combination with hardware or software not provided by Accela.

14. COLORADO GOVERNMENTAL IMMUNITY ACT: To the extent required by law and applicable to Accela, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq* shall apply to this Agreement.

15. 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*. Accela 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.

16. ASSIGNMENT AND SUBCONTRACTING:

A. Neither Party shall voluntarily or involuntarily assign any of its rights or obligations under this Agreement without obtaining the other Party's prior written consent, which consent shall not be unreasonably withheld. Any assignment without such consent will be ineffective and void., and will be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Accela shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's prior written consent in connection with a corporate reorganization, merger or combination, or a sale of all or substantially all of that Party's equity or assets.

17. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Unless otherwise agreed in writing signed by the Parties, any person or entity other than the City or Accela receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

18. NO AUTHORITY TO BIND: Neither Party has the authority to bind the other Party on any contractual matters. Contractual matters that purport to obligate a Party must be in writing properly executed by the Parties in accordance with applicable law.

19. 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 related to the subject matter herein 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 a Party 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 Parties. This Agreement and any amendments to it signed by the Parties shall be binding upon the Parties and their successors and assigns.

20. 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

21. CONFLICT OF INTEREST:

A. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. Accela shall not knowingly hire, or contract for services with, any employee or officer of the City that 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.

B. Neither Party shall not knowingly engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Each Party represents that it has disclosed any and all conflicts of interest of which it is aware as of the Effective Date. A conflict of interest shall include transactions, activities or conduct by a Party that would adversely affect its judgment, actions or work by placing that Party's own interests, or the interests of any Party with whom that Party has a contractual arrangement, in conflict with those of the other Party.

22. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Accela at the address first above written, and if to the City at:

Chief Information Officer
201 West Colfax Avenue, 3rd Floor
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

23. DISPUTES: All disputes between the City and Accela regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Manager and for purposes of this Agreement the Manager agrees to assign the process of rendering the decision to an outside, neutral party contracted by the City.

24. GOVERNING LAW; VENUE: This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and, to the extent applicable to Contractor, 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.

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

26. WARRANTY: As of the Effective Date, Accela 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. Accela represents that, as of the

Effective Date, each person signing and executing this Agreement on behalf of Accela has been fully authorized by Accela to execute this Agreement on behalf of Accela and to validly and legally bind Accela to all the terms, performances and provisions of this Agreement.

27. 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.

28. ORDER OF PRECEDENCE: In the event of any conflicts between the language of this Agreement and the exhibits, the language of the Agreement shall control.

29. 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, Accela's obligations to provide insurance and to indemnify the City shall survive for a period equal to that required by any and all applicable statutes of limitation.

30. COMPLIANCE WITH ALL LAWS: All of the services performed under this Agreement by Accela 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.

31. ADVERTISING AND PUBLIC DISCLOSURE: Neither Party shall include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall be in accordance with such prior written approval. Subject to City's obligations of confidentiality under this Agreement, 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.

33. 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.

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

35. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: The Parties consent to the use of electronic signatures by the other Party. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically. 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.

36. BACKGROUND CHECKS ON ACCELA'S EMPLOYEES. Accela is responsible for completing background checks on any employee who will be engaged on-site with the City under this Agreement in accordance with Accela standard policy. If requested in writing in by City, Accela shall affirm in writing that it has performed such background check(s).

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: TECHS-201843128-00

Contractor Name: ACCELA, INC.

By:  _____
21747F474F854F8...

Name: Jonathon Knight
(please print)

Title: Chief Customer Officer
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit A

Accela will provide resources on an On-Call basis to assist Technology Services with the support and enhancement of the Accela application to include, but not be limited to, Solution Architect Oversight, Server Install Support, Design Build and/or Change Consulting and Scripting Guidance.

Accela resources will be provided at an hourly rate of \$250

TRAVEL AND ASSOCIATED PER DIEM COSTS:

The City shall not reimburse Supplier for any costs associated with travel and per diem for resources local to Denver and its surrounding areas. For any non-local resources, Supplier may be reimbursed for costs associated with travel and per diem according to the City's Fiscal Accountability Rules (Rule 10.8 - Travel) which uses the current per diem rates established by the General Services Administration (GSA).

[GSA Per diem rates link](#)

These rates shall be inclusive of any other expenses resulting from the work performed under this Statement of Work (SOW). Unless otherwise specified in this SOW.

Airfare Flights: Airfare Flights that would exceed \$500 round-trip airfare will require approval by the City.

EXHIBIT B



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/14/2018

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

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

PRODUCER ABD Insurance & Financial Services 3 Waters Park Drive, Suite 100 San Mateo, CA 94403 www.theabdteam.com	CONTACT NAME: Cert Request PHONE (A/C, No, Ext): 650-488-8565 E-MAIL ADDRESS: TechCertRequest@theabdteam.com FAX (A/C, No): INSURER(S) AFFORDING COVERAGE INSURER A: Federal Insurance Company INSURER B: Chubb Indemnity Insurance Company INSURER C: AIG Specialty Insurance Company INSURER D: INSURER E: INSURER F:	NAIC # 20281 12777 26883
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COVERAGES**CERTIFICATE NUMBER:** 44201063**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	3604-91-08	9/1/2018	9/1/2019	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	7359-95-44	9/1/2018	9/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	7175-62-53	9/1/2018	9/1/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Errors & Omissions w/ Cyber			01-881-37-41	9/1/2018	9/1/2019	Limit : \$1,000,000

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

RE: All Operations of the Named Insured.
City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are additional insureds to General Liability and Automobile Liability. Primary wording applies with respects to General Liability. Waiver of Subrogation applies to General Liability, Automobile Liability and Workers' Compensation.

CERTIFICATE HOLDER**CANCELLATION**

City and County of Denver
201 West Colfax Avenue, 3rd Floor
Denver, CO 80202

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

AUTHORIZED REPRESENTATIVE

Rod Sockolov

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ACORD 25 (2016/03)

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