

CITY OF BOULDER, COLORADO
NOTICE OF REQUEST FOR PROPOSAL
RFP NO. 52-2008

City of Boulder Recreation Program Plan

The City of Boulder Parks and Recreation Department is requesting proposals for consultant leadership in the development of a Recreation Program Plan which will provide a basis for the future direction of the Recreation Division.

Proposal documents are available for inspection or download at:

www.bouldercolorado.gov/purchasing

Proposals will be received until 4:00 pm MST, October 17th 2008. Submissions shall be made electronically in PDF format to:

Teri Olander, Acting Recreation Superintendent
City of Boulder Parks and Recreation Department
3198 Broadway
Boulder, CO 80304

Email: olander@bouldercolorado.gov

Reference RFP No. 52-2008 Recreation Program Plan in the subject line of your email submittal.

Proposals shall be prepared at the bidder's expense and become a City record and therefore a public record. Confidential or proprietary data, if identified as such, will be held confidential upon request, if that request is made part of the proposal and if the City Attorney determines that the data meets the requirements of the Colorado Public Records Act.

The services upon which proposals are submitted shall equal or exceed the City of Boulder specifications. Preference is hereby given to labor, materials, supplies or provisions produced, manufactured or grown in Colorado, quality and price being equal to articles or services offered by competitors outside the State of Colorado.

The lowest responsible and best bid will be accepted, provided, however, that the City of Boulder, Colorado, acting through its duly authorized representatives shall have the right to reject any and all bids and waive any informality or irregularities contained in said bids.

City of Boulder, Colorado
A Municipal Corporation

By _____
For the Director of Finance and Records
Ex-officio City Clerk

**CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSAL
RFP No. 52-2008**

City of Boulder Recreation Program Plan

The city of Boulder invites your firm to submit a proposal to develop a Recreation Program Plan for City of Boulder Parks and Recreation Department.

I. Administrative Information

- A. ISSUING ENTITY:** This Request for Proposals (RFP) is issued by the Parks and Recreation Department of the City of Boulder, P.O. Box 791, Boulder, Colorado 80306. Telephone (303) 413-7200.
- B. PURPOSE:** To solicit a consultant's leadership in the development of a Recreation Program Plan for the Recreation Division of the City of Boulder Parks and Recreation Department. The Recreation Program Plan will be a comprehensive plan which will provide a basis for the future direction of the Recreation Division. The development of the plan will include community outreach, survey, needs assessment, and recreation inventory.
- C. SCOPE OF RFP:** This RFP contains instructions for submitting qualification materials; describes the criteria by which applicants will be selected; and describes the services and products to be provided. For a detailed scope of work see *Attachment A "Scope of Work"*.
- D. SCHEDULE OF ACTIVITIES:**
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| RFP notice issued | October 3, 2008 |
| RFP submission deadline | October 17, 2008 |
| Phone interview finalists | October 21 - 23, 2008 |
| Select consultant | by October 24, 2008 |
- E. INVITATION TO SUBMIT PROPOSALS:** Interested and qualified individuals, firms and consultants are invited to submit materials in accordance with this RFP. Submitted materials will be reviewed by a selection team and potential candidates will be phone interviewed for consideration. A decision on the consultant selected to enter into a contract will be made by October 24, 2008. Attachment B is a draft of the standard Consulting Services contract that will be issued for this project.
- F. INQUIRIES:** Inquiries concerning the RFP may be made to:

Teri Olander, Acting Recreation Superintendent
City of Boulder Parks and Recreation Department
3198 Broadway
Boulder, CO 80306
(303) 441-3429
Email: olander@bouldercolorado.gov

- G. REPORTING RESPONSIBILITIES:** The city's project lead is Teri Olander. All communications and correspondence from the consultant team will be directed through her. Other staff from the city will participate in the project as appropriate to their area of expertise.
- H. SELECTION CRITERIA:** Proposals received will be evaluated using the following weighted criteria:
- Experience on projects of similar size and complexity, such as Master Plans, with the organizational and technical skills necessary to accomplish the tasks identified in *Attachment A "Scope of Work"*. 40%
 - Demonstrated strengths in community-based planning processes, including the ability to establish and maintain constructive relationships with project stakeholders. 20%
 - Performance of services at a reasonable fixed cost. 20%
 - Successful completion in the development of Recreation Program Plans for other municipalities. 10%
 - Demonstrated ability to produce and present quality materials in digital and printed formats, written reports, and oral presentations in a timely and responsive manner. 10%
- I. REFERENCES:** Qualified applicants must have a satisfactory record of performance in developing and implementing similar projects and providing similar services in other settings.
- J. QUALIFICATION SUBMISSION:** Proposals must be received on or before 4:00 p.m. MST, October 17, 2008 via email to Teri Olander at olandert@bouldercolorado.gov. Please reference the city's RFP for a Recreation Program Plan in the subject line of your email submittal.
- K. RESPONSE MATERIAL OWNERSHIP:** All materials submitted regarding this RFP become the property of the city and may be returned to the consultant team at the city's option. Responses may be reviewed by any person at the discretion of the city after the final selection of a consultant team or entities has been made. Proprietary information will be handled in accordance with the Colorado Open Records Act.
- L. INCURRING COSTS:** The city is not liable for any cost incurred by entities prior to executing a contract or purchase order.
- M. ENVIRONMENTAL PURCHASING POLICY:** All printed and photocopied documents related to the fulfillment of this RFP and any resulting contracts must, whenever practical, use recycled paper, be double-sided, and otherwise fully comply with the provisions of the City's Environmental Purchasing Policy.
- N. OWNERSHIP OF WORK RESULTS:** Any and all products of work performed under contract with the city in both digital and hard copy forms are the property of the city and may not be sold or distributed by the vendor without permission.

II. Background and Objectives

A. BACKGROUND:

The city of Boulder Parks and Recreation Department offers recreation opportunities for people of all ages and abilities. Programs include youth activities, arts, athletics, dance, fitness, golf, gymnastics, pottery, swimming, tennis, weight training and yoga. Programs are also offered to people with physical and developmental disabilities and underserved populations. The Recreation Division operates three recreation centers, three athletic complexes, two outdoor pools, an outdoor skate park, a golf course, a pottery lab, and the Boulder Reservoir.

The Parks and Recreation Department Master Plan was accepted by the Boulder City Council in December of 2006. As part of the Master Plan, the Department committed to developing a Recreation Program Plan to provide future direction for the Recreation Division. Additional information about the department can be found online at www.boulderparks-rec.org.

B. OBJECTIVES:

Lead the process to develop a comprehensive Recreation Program Plan that is aligned with the department's approved master plan.

1. Determine desired recreation programs, services and facilities based on community values and needs through Community Outreach and the completion of Needs Assessments.
 - a. Community Outreach
 - i. Plan and facilitate community meetings to gain input from the general public.
 - ii. Plan and facilitate meetings with staff to gain input about Parks and Recreation programs, services and facilities.
 - iii. Assist with conducting a survey and analysis to determine recreation program, service and facility needs and community values.
 - iv. Plan and facilitate a SWOT analysis with stakeholders and staff.
 - b. Needs Assessments
 - i. Perform a parks and recreation industry trends analysis. The analysis should also reflect community needs and interests and how they can inform departmental decisions.
 - ii. Conduct an inventory of programs, services and facilities in the Boulder service area to determine overlap, inefficiencies, areas of omission and/or inadequacy.

- iii. Develop a needs assessment to assist in determining priorities for recreation programs, services and facilities provided by the city of Boulder.
2. Coordinate the development of a pricing policy and methodology for the Parks and Recreation Department's Recreation Division.
 - i. Work with staff to establish a pricing policy based on the community values highlighted in the community survey and the cost of services identified in the Program Viability Assessment
3. Develop a comprehensive Recreation Program Plan.

III. Proposal Submittals

INFORMATION TO BE SUBMITTED: This RFP encourages concise and well organized responses that clearly communicate the consultant team's understanding of the requirements and approach to providing cost effective and timely services. Proposals should address the specific approaches, scheduling of tasks and delivery of work products to fully communicate the intended scope of work. Proposals should also include any comments on the project including suggestions for augmenting, streamlining or clarifying the scope to meet the identified goals and objectives.

Consultant teams must provide the following information to the city:

Cover letter - A cover letter stating the name, address and phone number of the primary consultant and leader of the consultant team. This letter must bear the signature of the person who has the authority to commit the consultant team to this work.

Project Team - Identify the individual(s) who will be involved in this project, their roles, the percent of their time available during the anticipated time frame of the update, and their hourly rates. Include resumes indicating the related work experience and expertise for these individuals.

Team Organization - Describe the proposed management structure of the consultant team that would facilitate addressing the topics identified in the scope of work above.

Workload Summary - Identify what portion and elements of the work, if any, will be subcontracted and the subcontractors who will be employed as part of the consultant team. Provide an estimated summary of hours by participant for each activity.

Project Understanding and Approach – Describe your team's understanding of this project and approach for successfully completing the project by November 2009. Based on your experience, discuss any challenges that may be encountered and areas of concern that need to be addressed.

Cost Proposal – Include a schedule of fees that provides information on total proposed cost of services and a breakdown of the allocation of costs by task, staff time and materials rates for additional meetings.

- Separate cost estimates by function
- Include estimates by task supported by a schedule of fees that shows billable hours by staff position

References - Provide three professional references for recent and similar services performed by the consultant lead, as well as three references for any subcontractors. Please include a specific contact person and a phone number for each reference.

Work Samples - Copies of three different final reports produced for other clients by the primary consultant, preferably governmental agencies. These reports may be submitted in a standard digital format such as MS Word and Adobe pdf.

Comments or Recommendations – If you have comments or recommendations for clarifying or refining the Recreation Program Plan RFP and scope materials please include them with your proposal.

Other - Any other information deemed necessary by the proposing consultant team that responds to the selection criteria (Section 1-H) above.

Contract Review – Attachment B represents a draft of the contract to be issued as a result of the selection process. The awarded consultant will be expected to sign the contract before work can begin on the project. Language concerns must be submitted as part of your proposal.

ATTACHMENT A: SCOPE OF WORK

City of Boulder Recreation Program Plan

I. PROJECT OVERVIEW

To solicit a consultant's leadership in the development of a Recreation Program Plan for the Recreation Division of the city of Boulder Parks and Recreation Department. The Recreation Program Plan will be a comprehensive plan which will provide a basis for the future direction of the Recreation Division. The development of the plan will include community outreach, survey, needs assessment, and recreation inventory.

II. EXISTING RECREATION SERVICES

The city of Boulder Parks and Recreation Department offers recreation opportunities for people of all ages and abilities. Programs include youth activities, arts, athletics, dance, fitness, golf, gymnastics, pottery, swimming, tennis, weight training and yoga. Programs are also offered to people with physical and developmental disabilities and underserved populations. The Recreation Division operates three recreation centers, three athletic complexes, two outdoor pools, an outdoor skate park, a golf course, a pottery lab, and the Boulder Reservoir.

The Parks and Recreation Department Master Plan was accepted by the Boulder City Council in December of 2006. As part of the Master Plan, the department committed to developing a Recreation Program Plan to provide future direction for the recreation division. Additional information about the department can be found online at www.boulderparks-rec.org.

The staffing of the Recreation Division includes 75 standard employees and 400–1000 seasonal employees. The Parks and Recreation budget of \$24 million consists of six funds including the Recreation Activity Fund that accounts for the majority of the department's recreation operations including programs, services and facilities.

III. CITY STAFF TEAM

Teri Olander, Acting Recreation Superintendent and Project Lead
Alan Quiller, Recreation Administrator
Perry Brooks, Parks Planner
Abbie Novak, Business and Finance Manager

IV. PARKS AND RECREATION INFORMATION

The following information should be utilized for incorporation and/or reference throughout the development of the Recreation Program Plan:

- 2002 Recreation Facilities Needs Assessment
- 2005 City of Boulder Parks and Recreation Survey
- 2006 City of Boulder Parks and Recreation Master Plan
- 2008 City Manager's Work Group on Recreation Financing Final Report
- 2008 Blue Ribbon Commission Final Report
- 2009 Operating Budget and Parks and Recreation Six Funds Chart

- Recreation Program Viability Assessment (est. completion Spring 2009)

V. PUBLIC PROCESS

A minimum of two community open houses or workshops will be held in Boulder as part of the planning process. Further public involvement may be required of the project team as determined. Presentations of the Recreation Program Plan to various city staff, advisory boards (Parks and Recreation Advisory Board, Planning Board), City Council and the public may be required.

VI. RECREATION PROGRAM PLAN OVERVIEW

- A. Develop a Recreation Program Plan which will provide a framework for decision making which results in goals that align with the department Master Plan and are consistent with community values. Elements of the plan should include, but are not limited to, the following:
 - i. Purpose and Philosophy of Recreation in Boulder
 - ii. Vision for Recreation
 - iii. Guiding Principles
 - iv. Program Objectives
 - v. Recreation Pricing Policy and Methodology
 - vi. Implementation Strategy
- B. Plan and facilitate community meetings to gain input from the general public.
- C. Plan and facilitate meetings with staff to gain input about Parks and Recreation programs, services and facilities.
- D. Assist with conducting a survey and analysis to determine recreation program, service and facility needs and community values.
- E. Plan and facilitate a SWOT analysis with stakeholders and staff.
- F. Perform a parks and recreation industry trends analysis. The analysis should also reflect community needs and interests and how they can inform departmental decisions.
- G. Conduct an inventory of programs, services and facilities in the Boulder service area to determine overlap, inefficiencies, areas of omission and/or inadequacy.
- H. Develop a needs assessment to assist in determining priorities for recreation programs, services and facilities provided by the city of Boulder.
- I. Work with staff to establish a pricing policy based on the community values highlighted in the community survey and the cost of services identified in the Program Viability Assessment.
- J. Develop a comprehensive Recreation Program Plan.

VII. CONSULTANT DELIVERABLES

- A. Recreation Program Plan deliverables include:
 - i. SWOT analysis with stakeholders
 - ii. SWOT analysis with staff
 - iii. Parks and Recreation industry trends analysis
 - iv. Inventory of programs, services and facilities in Boulder service area
 - v. Recreation needs assessment for the city of Boulder
 - vi. Pricing policy and methodology for the Parks and Recreation Department
 - vii. Comprehensive Recreation Program Plan
- B. Additional Recreation Program Plan work products:
 - i. Copies of all consultant work products must be made available in digital form as pdfs for replication and in the original program format to allow for future use and manipulation.
 - ii. Prepare presentation and support materials for public forums, advisory board meetings, city council study sessions and public hearings.

VIII. PROJECT ADMINISTRATION AND MEETING FACILITATION

- A. The consultant will be expected to work closely with city staff, attend a variety of meetings, and will be responsible for timely delivery of all work efforts by the project team.
- B. The consultant will be required to maintain a project tracking and accounting system that accounts for personnel hours and direct expenses related to the project.
- C. The consultant will be expected to facilitate meetings with the Parks and Recreation staff team and the public.

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made this ____ day of _____, 20__ by and between the City of Boulder, Colorado, a Colorado home rule city (hereafter “the City”), and _____, (hereafter the “Consultants”).

RECITALS

A. The City desires to obtain consulting services during the period from _____ through _____, in connection with the procurement of _____ (hereafter the “Project”).

B. The Consultants provide professional consulting services to the public and are fully qualified to perform the consulting services needed by the City in connection with the Project.

COVENANTS AND CONDITIONS

NOW, THEREFORE, in consideration of the promises and obligations set forth below, the City and the Consultants agree as follows:

I. SCOPE OF SERVICES

A. General.

The Consultants shall serve as the City’s professional advisors and representatives in connection with the Project and shall consult with and advise the City as it reasonably requires during the term of this Agreement. As a general matter, they shall communicate with the City about the Project only through _____, who has been assigned by the City to the Project as Project Manager.

B. Specific Duties and Responsibilities

In connection with the Project, the Consultants shall undertake the duties and responsibilities and provide the services described in Appendix A, captioned "Scope of Work" which consists of ____ pages and is attached hereto and made a part hereof.

C. Extra Services.

Upon the express, written request of the City, the Consultants shall perform services beyond the scope of the duties and responsibilities described in Appendix A. The Consultants shall charge the City for such extra services, if any, in accordance with the provisions of Subsection IV.B.

D. Documents.

All work notes, reports, documents, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other materials developed specifically for the Project are and shall remain the sole and exclusive property of the City. The Consultants, upon request by the City, agree to provide documents or any other materials developed specifically for the Project in an electronically editable format (for example, Word or WordPerfect). The Consultants shall not provide copies of any material prepared under this Agreement to any other party without the prior written consent of the City.

II. COOPERATION BY THE CITY

The City will thoroughly and as expeditiously as reasonably possible consider all reports, sketches, drawings, specifications, proposals, and other documents prepared by the Consultants, and it shall inform the Consultants of all decisions that it has made which would affect the Consultants' work under this Agreement as soon as reasonably feasible. The City will inform the Consultants of any pending change or revision to the Project as soon as reasonably feasible. The City will provide

the Consultants with current, updated plans, if any, for the Project as soon as reasonably feasible after they are produced.

III. SCHEDULE

The Consultants' services are anticipated to be provided over the course of _____, occurring between _____ and _____. A detailed project schedule is presented in Appendix A. However, it is understood by the parties that the actual schedule may differ from what is anticipated. The City shall advise the Consultants in writing of each change in the schedule as soon as feasible after it becomes aware thereof, and the Consultants shall thereafter adjust the timing of their services so as to comply with the revised schedule. The Consultants shall provide their services at such times as are necessary in order to promote the smooth progress of the Project.

IV. AMOUNT OF PAYMENTS TO CONSULTANTS

A. Aggregate Limits.

Unless services in addition to those specified in Section I are subsequently agreed upon in writing, the total amount paid by the City to the Consultants pursuant to this Agreement shall not exceed the sum of \$_____.

B. Specific Charges. The Consultant's primary employees who will work on the Project and their billing rates are set forth Appendix B, which consists of _____ page(s) and is attached hereto and made a part hereof. The City will pay the Consultants on the basis of their time and direct expenses incurred in order to provide the services required by this Agreement.

I. The charge for time shall consist of the hourly rates for the Consultants' employees multiplied by the number of hours and parts of hours each such employee works directly on the Project. The time each such employee must spend traveling in order to

provide the services required by this Agreement will be charged in the same way as his or her other time spent working on the Project. It is understood by the parties that the rates include a surcharge intended to cover profit and overhead, including, but not limited to, taxes, employee benefits, administrative support staff and supplies, office rent and utilities, and insurance. The Consultants' primary employees who will work on the Project and their billing rates, which includes the surcharge, are set forth in Appendix B.

2. Direct expenses incurred by the Consultants in connection with the Project shall be charged to the City on the basis of the expenses actually incurred by the Consultants, without any additional surcharge added by the Consultants. Such direct expenses shall include printing costs and long-distance telephone charges. Any direct or indirect expenses incurred by the Consultants while working on the Project that are in common with work on other projects for other clients shall be prorated among all those clients according to the benefit derived by each client. The City shall not pay for the expense of the Consultants' owned or hired automobiles used in the connection with the Project, which shall be considered a part of the Consultants' hourly rates.

C. Inspection of Records.

Upon reasonable, advance request, the City may inspect and copy any or all records of the Consultants which would bear on any amounts charged to the City pursuant to this Agreement.

V. TIME OF PAYMENTS TO CONSULTANTS

The Consultants shall bill their charges to the City periodically, but no more frequently than once a month. Each bill shall contain a statement of the time that the primary employees spent on the Project since the previous bill, a brief description of the services provided by each such employee and an itemization of direct expenses for each task.

VI. QUALIFICATIONS ON OBLIGATIONS TO PAY

Notwithstanding any other terms of this Agreement, the City may withhold any payment (whether a progress payment or final payment) to the Consultants if any one or more of the following conditions exists:

A. The Consultants are in default of any of their obligations under this Agreement.

B. Any part of such payment is attributable to services which are not performed according to this Agreement. (The City will pay for any part thereof attributable to services performed according to this Agreement).

C. The Consultants have failed to make payments promptly to any third parties used in the services for which the City has made payment to the Consultants.

D. The City, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Project or any task according to this Agreement. In such case, no additional payments will be due to the Consultants until the Consultants, at their sole cost, perform a sufficient portion of the Project or task so that the City determines that the compensation then remaining unpaid is sufficient to complete the Project or task.

E. No partial payment shall be final acceptance or approval of that part of the Project or task paid for, or shall relieve the Consultants of any of their obligations under this Agreement.

VII. CONSULTANTS' DUTIES

A. Abilities, Qualifications, Experience, and Best Efforts.

Notwithstanding anything to the contrary contained in this Agreement, the City and the Consultants agree and acknowledge that the City enters into this Agreement relying on the special and unique abilities of the Consultants to accomplish the Project. The Consultants accept the relationship of trust and confidence established between them and the City by this Agreement. The Consultants covenant with the City to use their best efforts. The Consultants shall further the interests of the City according to the City's requirements and procedures, according to the highest professional standards and in compliance with all applicable national, federal, state, municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction.

B. No Conflicts.

The Consultants represent, covenant, and agree that they have and will undertake no obligations, commitments, or impediments of any kind that will limit or prevent them from the timely completion of the Project, loyally and strictly according to the best interests of the City. In case of any conflict between interests of the City and any other entity, the Consultant shall fully and immediately disclose the issue to the City and shall take no action contrary to the City's interests.

C. Limitation on Public Statements and Lobbying Activity.

Consultants are retained to provide information and advice to the City that includes confidential data, work product, and other privileged or confidential information that is protected under pertinent laws and City policies. In order to maintain the fact and appearance of absolute objectivity, loyalty, and professionalism, Consultants shall not, without the prior written consent of the City, do any of the following:

1. Disclose at any time information obtained as a result of this contractual relationship to any third party;
2. Lobby any City agency on any pending matter while they are under contract to the City;
3. Make any public statements or appear at any time to give testimony at any public meeting on the subject matters with regard to which Consultant is or was retained by the City.

To the extent that the City provides written consent for the disclosure of information or authorizes the making of public statements, the City may impose such conditions upon such disclosure or communications as it thinks appropriate, and Consultants agree to comply with those conditions.

This provision shall not preclude Consultants from providing information to law enforcement officials in connection with any criminal justice investigation.

D. Quality of Services.

The Consultants represent, covenant, and agree that all of the services that they will furnish under this Agreement shall be of at least the standard and quality prevailing among highly competent professionals who perform work of a similar nature to the work described in this Agreement.

E. Accuracy of Work.

The Consultants represent, covenant, and agree that its work will be accurate and free from any material errors. The Consultants additionally represent, covenant, and agree that the planning for the Project will conform to all foreseeable uses thereof. City approval shall not

diminish or release the Consultants' duties, since the City is ultimately relying upon the Consultants' skill and knowledge.

F. Duty to Warn.

The Consultants agree to call to the City's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Consultants (by the City or any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, Consultants shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so by the City. Nothing shall detract from this obligation unless the Consultants advise the City in writing that such data may be unsuitable, improper, or inaccurate and the City nevertheless confirms in writing that it wishes the Consultants to proceed according to the data as originally given.

G. Attendance at Meetings.

The Consultants shall attend such meetings on the work required by this Agreement as the City requires. The City will give reasonable notice of any such requirement, so that the Consultants may schedule and attend.

H. Efficiency.

The Consultants represent, covenant, and agree to furnish efficient business administration and superintendence and perform the services required by this Agreement in the best, most expeditious and most economical manner consistent with the interests of the City.

I. Books and Records.

The Consultants shall keep their books and records for the Project and reimbursable expenses according to recognized accounting principles and practices, consistently applied. The

Consultants shall make them available for the City's inspection at all reasonable times. The Consultants shall retain such books and records for at least three years after completion of the Project.

J. Payment of Bills.

The Consultants shall promptly pay all bills for labor and material performed and furnished by others in performance of the Project.

VIII. TERMINATION

A. Termination for Breach.

This Agreement may be terminated by either party for a material breach of this Agreement by the other party not caused by any action or omission of the terminating party by giving the other party written notice at least three days in advance of the termination date. The termination notice shall specify in reasonable detail each such material breach. In the event of such termination by either party, the Consultants shall promptly deliver to the City all drawings, computer programs, computer input and output, analysis, plans, photographic images, tests, maps, surveys, and written materials of any kind generated in the performance of services under this Agreement up to and including the date of termination. If this Agreement is so terminated by the Consultants, they will be paid for all services rendered up to the date of termination, except as set forth in Section VI above. If this Agreement is so terminated by the City, the Consultants will be paid for all services rendered to the date of termination, except those services which, in the City's judgment, constituted the grounds, in whole or in part, of the notice of termination, and except as set forth in Section VI, above. Upon such payment, all obligations of the City to the Consultants under this Agreement shall cease.

B. Termination for Convenience.

In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving the Consultants written notice at least seven days in advance of the termination date. In the event of such termination, the Consultants will be paid for all services rendered to the date of termination, except as set forth in Section VI, above, and upon such payment, all obligations of the City to the Consultants under this Agreement shall cease. Furthermore, in the event of such termination, the Consultants shall promptly deliver to the City all drawings, computer programs, computer input and output, plans, photographic images, analyses, test, maps, surveys, and written materials of any kind generated in the performance of their services under this Agreement up to and including the date of termination.

IX. SUSPENSION

Without terminating this Agreement or breaching its obligations hereunder, the City may, at its pleasure, suspend the services of the Consultants hereunder. Such suspension may be accomplished by giving the Consultants written notice one day in advance of the suspension date. Upon receipt of such notice, the Consultants shall cease their work in as efficient a manner as possible so as to keep their total charges to the City for services under this Agreement to the minimum. No work shall be performed during such suspension except with specific prior authorization by the Project Manager. The City recognizes that suspension and subsequent reactivation may inconvenience the Consultants and will endeavor to provide advance notice and minimize its use. After a suspension has been in effect for thirty days, the Consultants may terminate this Agreement at will.

X. LAWS TO BE OBSERVED

The Consultants shall be cognizant of all federal and state laws and local ordinances and regulations which in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction over the same, and shall defend, at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall defend, protect and indemnify the City against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself, its subcontractors, agents, or employees.

XI. PERMITS AND LICENSES

The Consultants shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of their services under this Agreement.

XII. PATENTED DEVICES, MATERIALS AND PROCESSES

The Consultants shall hold and save harmless the City from any and all claims for infringement, by reason of the use of any patented design, device, material, process, or trademark or copyright and shall indemnify the City for any costs, expenses, and damages, including court costs and attorney fees, which it might be obligated to pay by reason of infringement at any time during the prosecution or after completion of their services under this Agreement.

XIII. INDEPENDENT CONTRACTOR

The relationship between the Consultants and the City is that of an independent contractor. The Consultants shall supply all personnel, equipment, materials and supplies at their own expense, except as specifically set forth herein. The Consultants shall not be deemed to be, nor shall they represent themselves as, employees, partners, or joint venturers of the City. No employee or officer

of the City shall supervise the Consultants. **The Consultants are not entitled to workers' compensation benefits and are obligated to directly pay federal and state income tax on money earned under this Agreement.**

XIV. INDEMNIFICATION

The Consultants shall be responsible for all damages to persons or property caused by them, their agents, subcontractors, employees or representatives which may arise from their negligent or wrongful performance of this Agreement, and shall indemnify, hold harmless, and defend the City and its officers, agents and employees from any claim or action brought by reason thereof. As part of this obligation, the Consultants shall compensate the City for the time, if any, spent by its counsel in connection with such claims or actions at the rates generally prevailing among private practitioners in the City of Boulder for similar services. The Consultants' obligation to indemnify the City as set forth in this Agreement shall survive the termination or expiration of this Agreement.

XV. INSURANCE

A. The Consultants agree to procure and maintain in force during the terms of this Agreement, at its own cost, the following minimum coverages:

1. Workers' Compensation and Employers' Liability

- a) State of Colorado: Statutory
- b) Applicable Federal: Statutory
- c) Employer's Liability: \$100,000 Each Accident
\$500,000 Disease-Policy Limit
\$100,000 Disease-Each Employee
- d) Waiver of Subrogation

2. Commercial General Liability

- a) Bodily Injury & Property Damage General Aggregate Limit
\$1,000,000
- b) Personal & Advertising Injury Limit
\$1,000,000
- c) Each Occurrence Limit
\$1,000,000

The policy shall be on an Occurrence Form and include the following coverages: Premises Operations; Personal and Advertising Injury; Medical Payments; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

3. Professional Liability (errors and omissions)

- | | |
|---------------------|-------------|
| a) Each Claim/Loss: | \$1,000,000 |
| b) Aggregate: | \$1,000,000 |

City of Boulder may require that this coverage remain in place for one year after the project is complete.

4. Commercial Automobile Liability Limits

- | | |
|--|-------------|
| a) Bodily Injury & Property Damage Combined Single Limit | \$1,000,000 |
| b) Medical Payments per person | \$ 5,000 |
| c) Uninsured/Underinsured Motorist | \$ 100,000 |

Coverage is to be provided on Business Auto, Garage, or Truckers form. Coverage provided should be at least as broad as found in ISO form CA0001 (BAP), CA0005 (Garage) or CA0012 (Trucker) including coverage for owned, non-owned, & hired autos.

B. Coverage.

Insurance required by this Agreement shall be primary coverage, unless otherwise specified, and shall specify that in the event of payment for any loss under the coverage provided, the insurance company shall have no right of recovery against the City or its insurers. All policies of insurance under this Agreement shall be provided by a reputable insurance company or companies qualified to conduct business in Colorado. The City reserves the right, but shall not have the duty, to reject any insurer which it finds to be unsatisfactory and insist that the Consultants

substitute another insurer that is reasonably satisfactory to the City. Property and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of not less than A- VI. This insurance shall be maintained in full force and effect during the term of this Agreement and for the additional periods set forth herein and shall protect the Consultants, its agents, employees and representatives, from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from negligent or wrongful acts or omissions of the Consultants, their agents, employees, and representatives in the performance of the services covered herein.

C. Additional Insureds.

All Insurance policies (except Workers Compensation and Professional Liability) **shall include City of Boulder and its elected officials and employees as additional insureds as their interests may appear.** The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto and Umbrella Liability.

D. Automobile Coverage.

Automobile insurance shall, without limitation, cover all automobiles used in performing any services under this Agreement.

E. Claims-Made Policies.

If coverage is to be provided on Claims Made forms, Consultants must refer policy to the City Attorney's Office for approval and additional requirements. In the case of any claims-made insurance policies, the Consultants shall procure necessary retroactive dates, Atail@ coverage and extended reporting periods to cover a period at least two years beyond the

expiration date of this Agreement. This obligation shall survive the termination or expiration of this Agreement.

F. The Consultants shall not cancel, materially change, or fail to renew required insurance coverages. The Consultants shall notify the Project Manager of any material reduction or exhaustion of aggregate limits. Should the Consultants fail to immediately procure other insurance, as specified, to substitute for any policy canceled before final payment to the Consultants, the City may procure such insurance and deduct its cost from any sum due to the Consultants under this Agreement.

G. Certificates.

Certificates showing that the Consultants are carrying the above-described insurance, and the status of the additional insureds, shall be furnished to the City prior to the execution of this Agreement by the City. Certificates of insurance on all policies shall give the City of Boulder written notice of not less than thirty (30) days prior to cancellation or change in coverage. The Consultants shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.

H. Non-Waiver.

The parties understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (now \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, '24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the parties, their officers, or their employees.

XVI. PROHIBITIONS ON PUBLIC CONTRACTS FOR SERVICES

The Consultants certify that it shall comply with the provisions of section 8-17.5-101 *et seq.*, C.R.S. The Consultants shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Consultants that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

The Consultants represent, warrant, and agree (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this contract through participation in either the E-Verify or the Department Program; (ii) that the Consultants are prohibited from using either the E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while the public contract for services is being performed; and (iii) if the Consultants obtain actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Consultants shall be required to:

- 1) Notify the subcontractor and the contracting state agency or political subdivision within three days that the Consultants has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- 2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultants shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Consultants further agree that it shall comply with all reasonable requests made in the course of an investigation under section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Consultants fail to comply with any requirement of this provision or section 8-17.5-101 et seq., C.R.S. the City may terminate this contract for breach and the Consultants shall be liable for actual and consequential damages to the City .

XVII. INTEGRATION

This document constitutes the entire agreement between the City and the Consultants and incorporates all prior verbal and written communications between the parties concerning the subject matter included herein.

XVIII. NO ASSIGNMENT

Neither party shall assign, sublet, or transfer any interest in this Agreement without the written consent of the other.

XIV. AMENDMENT IN WRITING

No amendment or modification shall be made to this Agreement unless it is in writing and signed by both parties.

XX. GOVERNING LAW AND VENUE

This Agreement is governed by the laws of the State of Colorado. Any suit between the parties arising under this Agreement shall be brought only in a court of competent jurisdiction for the Twentieth Judicial District of the State of Colorado.

XXI. NO THIRD PARTY BENEFICIARIES

The parties intend no third party beneficiaries under this Agreement. Any person other than the City or the Consultants receiving services or benefits under this Agreement is an incidental beneficiary only.

XXII. FINANCIAL OBLIGATIONS OF THE CITY

All financial obligations of the City under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a pledge of the City's credit, or a payment guarantee by the City to the Consultants.

XXIII. NO WAIVER

No waiver of any breach or default under this Agreement shall be a waiver of any other or later breach of default.

XXIV. AUTHORITY

Consultants warrant that the individual executing this Agreement is properly authorized to bind the Consultants to this Agreement.

[SIGNATURE PAGE TO FOLLOW]

19

APPENDIX A SCOPE OF WORK

APPENDIX B
CONSULTANTS PERSONNEL AND BILLING RATES