



REQUEST FOR PROPOSAL

FOR

PROFESSIONAL ENGINEERING SERVICES

FOR

COLORADO CENTER BICYCLE/PEDESTRIAN BRIDGE

Contract Control Number: CE92032

Project: PJ00909_001

Date of Issuance: August 5, 2009

**CITY AND COUNTY OF DENVER
DEPARTMENT OF PUBLIC WORKS
NOTICE OF REQUEST FOR PROPOSALS**

**Professional Design Engineering Services for Colorado Center Bicycle/Pedestrian Bridge
CE92032
Project No. PJ00909_001**

The Department of Public Works, City and County of Denver, has issued a Request for Proposals (the “RFP”), for professional services for the project named above. Complete RFP documents will be available for download online at the following web address: www.denvergov.org/DPW_Contract_Admin

Responses in the form of printed proposals will be due at 11:00 a.m. local time on September 9, 2009, delivered to Public Works Finance and Administration, Attn: Elizabeth Sample, 201 W. Colfax, Ste. 614, Denver, CO 80202.

A Pre-Proposal Meeting will be held at 9:00 a.m. local time on August 19, 2009, in Conference Room 4.F.6, Location: Webb Building, 201 West Colfax Avenue, Denver, CO 80202. All firms interested in submitting a proposal are encouraged to attend. All Proposers will be held responsible for any information conveyed at the meeting. Further information about the meeting is contained in the RFP.

General Statement of Work: The City seeks professional design engineering and related consulting services in connection with the construction of a bicycle/pedestrian bridge across I-25 at The Colorado Center development on the south and at the intersection of Bellaire St. and Jewell Ave. on the north and helping the City realize its goal of providing an aesthetically pleasing bridge that is friendly to both bicyclists and pedestrians.

Minority and Women Business Enterprise Goal: The Project goal of **12%** must be met with certified participants as set forth in Section 28-60, D.R.M.C. or through the demonstration of a sufficient good faith effort under Section 28-62 D.R.M.C. For compliance with good faith requirements under Section 28-62(b), **the M/WBE percentage solicitation level required for this project is 100%.**

General: As the City’s best interests may appear, the Manager of Public Works reserves the right to waive informalities in, and to reject any or all, proposals.

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Publication Dates: August 5, 6, 7, 2009
Published In: The Daily Journal

REQUEST FOR PROPOSAL

Professional Design Engineering Services for Colorado Center Bicycle/Pedestrian Bridge

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Section 1. Introduction

This Request for Proposal (“RFP”) is issued to provide the selection process for Professional Design Engineering Services for the project named above (Project Manager must be a licensed Professional Engineer in the State of Colorado).

Firms submitting a response to the RFP will be asked at a minimum, to state their qualifications, understanding/experience relating to the project and offer their methodology for meeting the design criteria. Respondents will also be required to submit required M/WBE forms with their response. The finalists from the RFP Phase will proceed to the Interview Phase and be requested to participate in oral interviews.

Tentative Selection Schedule:

Advertise and Issue RFP	August 5, 2009
Pre-Proposal Meeting 9:00 am Webb 4.F.6... ..	August 19, 2009
Deadline to Submit Questions 5:00 p.m.	August 24, 2009
Deadline to Submit Joint Venture Forms to DSBO (if applicable)	September 4, 2009
Responses (Printed Proposals) to RFP Due 11:00 a.m.	September 9, 2009
Notify Short Listed Firms and Schedule Interview	September 23, 2009
Interviews	October 7, 2009
Notice of Selection	October 14, 2009
Complete Contract Negotiations.....	October 26, 2009
Contract Execution/NTP	December 2009, 2009

Note: Contracts over \$500,000.00 must be approved by City Council.

The competitive selection process provided for under this RFP will focus on the qualifications and prior history of performance on similar projects of each prime firm and the members of the prime firm’s proposed team, in accordance with the selection criteria set forth in this RFP. Thoughtful written responses to this RFP will enable the City to select the most qualified proposers.

Section 2. Project Description and Draft Statement of Work

This Project generally involves professional design engineering and related services in connection with the construction of a bicycle/pedestrian bridge across I-25 at The Colorado Center development on the south side and at the intersection of Bellaire St. and Jewell Ave. on the north side. The City’s federal funding application process for this project stressed the need for pedestrian/bicycle connectivity over I-25 through the Colorado Center to the Colorado Station on the Regional Transportation District’s Southeast Light Rail Transit Corridor. Additionally, the Denver Bicycle Master Plan Update (2001) identified connectivity across I-25 at this location as a major missing link in the bicycle system. This connection helps the City realize its goal of providing an aesthetically pleasing bridge that is friendly to both bicyclists and pedestrians and provides the connectivity mentioned above.

The project is a continuation of the **Colorado Center Pedestrian/Bicycle Bridge Size and Location Study (2009)**. (Electronic copy is available www.denvergov.org/DPW_Contract_Admin). The purpose of this study for the City and County of Denver (CCD) was to evaluate the site locations along I-25

between Colorado Boulevard and Evans; to determine the required bridge size and span arrangement at each location; and recommend a preferred location.

The selected consultant will be required to review the **Colorado Center Pedestrian/Bicycle Bridge Size and Location Study** document and confirm that the location selected best satisfies the City's goals for this project. If the consultant determines that a different location would better serve the City's needs, that location should be defined and reasons given for its recommended selection. This document can be found at:

http://www.denvergov.org/DPW_Contract_Admin/HomePage/RequestforProposals/tabid/424877/Default.aspx

The bridge design should be developed in the context of the following City plans which can be found on the DenverGov website:

Citywide Plans:

- Bicycle Master Plan Update (2001)
http://www.denvergov.org/Portals/482/documents/bike%20plan%203_07_02.pdf
- Blueprint Denver (2002)
<http://www.denvergov.org/Portals/650/documents/BlueprintDenver.pdf>
- Pedestrian Master Plan (2004)
<http://www.denvergov.org/Portals/514/documents/PMPAugust04.pdf>
- Storm Drainage Master Plan (2005, as updated)
<http://www.denvergov.org/ProductsandServices/HardCopyMapProducts/tabid/426983/Default.aspx>
- Transit Oriented Development (TOD) Strategic Plan (2006)
<http://www.denvergov.org/Portals/193/documents/full%20tod%20st%20plan%20.pdf>
- Strategic Transportation Plan (2008)
<http://www.keepdenvermoving.com/>

Small Area Plans:

- Colorado Station Area Framework Plan (2003)
http://www.denvergov.org/Default.aspx?alias=www.denvergov.org/DPW_Contract_Admin
- Colorado Station General Development Plan (2008)
<http://www.denvergov.org/CompletedPlans/ColoradoStationGDP/tabid/433056/Default.aspx>

The selected consultant should have the experience and resources to develop the most cost-effective, “signature” bridge (unique, contextual) design for this location at the Colorado Center/Colorado Station.

In addition, Denver has identified other potential locations (See below examples) for bicycle/pedestrian bridges in Citywide and small area plans, including Transit-Oriented Development (TOD) plans for rail station areas, and in the course of participation in Regional Transportation District (RTD) rail transit planning and environmental processes. These other bicycle-pedestrian bridges would connect across barriers such as waterways, rail tracks, highways, and/or arterial corridors, and would be of different span lengths, heights, and function. As part of the design process, Denver would like the selected consultant to develop a “prototype” Denver bridge structure that which could be tailored with the actual structure design, and individualized with a different “skin” or urban design elements depending on the location and context.

Examples of these bridge locations:

- Existing Evans Lt Rail Station on the Southwest Corridor -- Proposed bike-ped bridge over Santa Fe and the Rail Tracks to the Platte River Greenway Trail
- Proposed 38th & Blake Commuter Rail Station on the East Corridor -- over Rail Tracks to the Brighton Corridor at about 36th Street
- Proposed Colorado Blvd. Station on the East Corridor -- Proposed bike-ped bridge over "Market Lead" Rail Tracks to the west of station for access to and from the neighborhood
- Valley Highway Environmental Impact Statement (EIS) -- Proposed bike-ped bridge over I-25 to the Platte River Greenway Trail between Alameda and 3rd Avenue
- Proposed Bike-Ped bridge over Rail Tracks at 31st St from Brighton Boulevard/Denargo Market Redevelopment to Walnut/Blake
- Proposed Bike-Ped Bridge over Platte River from Arkins Court to Ringsby Court in the vicinity of 35th/36th Street

In developing the preliminary design it is the City's goal to use the recommended locations at each end of the bridge, while developing a structural solution that can be cost-effectively fabricated and erected within the time and budget constraints for the project. It is noted that CDOT will not allow construction to take place over active traffic on I-25; I-25 traffic will need to be detoured around the project site during bridge erection. Therefore, the **constructability of the bridge is of paramount consideration.**

The major project components include an approximately 275-ft., one- or two-span covered bicycle/pedestrian bridge, with 10 ft. or 14 ft. clear horizontal and 10 ft. clear vertical, streetscaping/ramps/landscaping and lighting on approaches to the bridge. Additionally, right-of-way is expected to be required at each end of the bridge.

Specific services will include, but are not limited to: bridge/structural design, traffic and traffic control engineering, civil engineering, geotechnical engineering, drainage design, utility coordination, surveying and environmental work, continuous public and agency involvement and coordination, streetscape, landscape, urban and pavement designs. Outreach to adjacent property owners, residents, and registered neighborhoods organizations at appropriate milestones in the project, will be expected, and should be specifically outlined in the proposal. Additionally, security at the bridge and approaches including video cameras, emergency phones, and lighting will need to be addressed.

The total project budget, including design and construction, is \$8 Million. The Project is anticipated to be funded with \$4 Million in 2009 and 2010 City Capital Improvement Funds, and \$4 Million in 2011 federal Transportation Improvement Program (TIP) Funds.

The Colorado Center RTD station does not have convenient bicycle/pedestrian access from the north. While there are sidewalks on both the Colorado Blvd. and Evans Ave. bridges, both of these bridges are at I-25 interchanges with high speeds and volumes of traffic, as well as the need to cross on- and off-ramps, that many people find daunting (including people with disabilities). The need for a bridge was discussed as far back as 1999 and resulted in the Southeast Corridor Environmental Impact Statement (EIS) Bicycle and Pedestrian Plan including the following text: "As a result of the poor conditions along Colorado it has been suggested that a separate pedestrian overpass be constructed from the Colorado Center to Jewell, north of I-25." Additionally, The Denver Bicycle Master Plan identifies connectivity across I-25 to the Colorado Center and RTD Light Rail Station as a major missing link in the bicycle system and proposes a pedestrian bridge across I-25 at S. Bellaire Street and E. Jewell Avenue as a near term implementation goal. A Federal Funding Request was submitted to the Denver Regional Council of Governments (DRCOG) in September 2007 and was approved for funding in the Spring of 2008.

The City and County of Denver (CCD) in January 2009 hired Felsburg, Holt, and Ulevig (FHU) to

complete a concept level study to evaluate the site locations along I-25 between Colorado Boulevard and Evans; along with the required bridge size and span arrangement at each location; and recommend a preferred location. The selected consultant will be required to review the **Colorado Center Bicycle / Pedestrian Bridge Size and Location Study** document (available electronically at www.denvergov.org/DPW_Contract_Admin) and confirm that the location selected best satisfies the City's goals for this project. If the consultant determines that a different location would better serve the City's needs, that location should be defined and reasons given for its recommended selection.

In developing the preliminary design it is the City's goal to preserve the Colorado Center Bicycle/Pedestrian Bridge Size and Location Study's recommended locations or the locations recommended by the selected consultant on each end of the bridge to the extent possible, while developing a structural solution that can be cost-effectively fabricated and erected within the time and budget constraints for the project.

To summarize, the City's priorities are:

1. Project completion under budget
2. Constructability
3. Structure aesthetics (Signature Bridge)

Section 3. Design Considerations

A. Bridge Use and Width: The pedestrian bridge is anticipated to have primarily pedestrian usage, but will also be designed to be accessible for bicyclists and be ADA compliant. The bridge width is to be designed to a minimum width of 10 ft. clear or a width of 14 ft. clear if feasible, and a height of 10 ft. clear. The height above I-25 as above all other roadways is to be 17 ft. 6 in. clear.

B. Bridge Type: The goal of the improvements is to provide a functional, safe, cost-effective, visually appealing bicycle / pedestrian access.

C. Bridge Design Criteria: The bridge is to be designed using CDOT and AASHTO Pedestrian Bridge Design Criteria.

Section 4. Major Features of Proposed Construction

The major project components include an approximately 275 ft. single span covered pedestrian/bike bridge, 10 ft. minimum or 14 ft. clear horizontal and 10 ft. clear vertical, streetscaping/ramps/landscaping and lighting on approaches to the bridge. It is anticipated that additional right of way may be required at each end of the bridge. No elevators will be considered on the bridge approaches.

Section 5. Budget and Tentative Schedule

The total project budget is \$8 Million. This figure is all inclusive, and includes all design, construction, construction management, and all other costs of whatever nature.

2008-2013 TIP Funding Request was submitted to DRCOG in September 2007 and was approved for funding in the Spring of 2008. The Project will be funded with \$4,000,000.00 of local funding and \$4,000,000.00 in federal funding

This RFP is for Professional Engineering (Project Manager must be a licensed Professional Engineer in the State of Colorado) services necessary to complete the design and to provide construction related engineering services.

The tentative schedule for the preliminary design phase is to begin work January of 2010 and provide preliminary plans including Structure Selection Report, specifications, and estimate by July of 2010. Final design will begin September of 2010 with construction documents to be completed by February of 2011.

Section 6. Notes Regarding Scope of Services

The Consultant for the Colorado Center Bridge over I-25 Project shall perform project development and preliminary design, final design, including plans, specifications, and an estimate of probable construction costs, and construction services based on the information contained in this RFP and Statement of Work. **It is anticipated that the consultant contract will cover scope of work through Bid Evaluation and Assistance Phase. Construction Phase services may be added to the design consultants contract.**

Throughout the duration of design of this project, the Consultant must perform **substantial and continuous coordination and communication** with the following entities:

- Various City and County of Denver Agencies
- Public and private utility organizations
- Various Public Agencies, including CDOT
- Registered Neighborhood Organizations
- Lincoln Properties
- Koll Denver
- Jewell Health Care
- Habitat for Humanity
- Others as required

It is anticipated that property will have to be purchased for right-of-way to accomplish the project goals.

The Consultant shall also perform all of the support services needed to obtain all Permits that are needed on this project.

Executive Order 123 requires the use of sustainable development measures in City Construction projects. The City is in the process of developing the specific guidelines for complying with this Executive Order (anticipated before contract NTP) for incorporation into the project.

Section 7. Project Development Review and Preliminary Design Phase

The City and Consultant will work together to develop design concepts for the project and assess their functionality as well as aesthetic value. Structure types for the bridge and ramps will be developed, assessed and compared. Appropriate studies such as the field survey, right-of-way research, geotechnical analysis and environmental study will be undertaken and the results incorporated. The entire project will be completed in **English units**.

A. Progress Meetings: The City and the Consultant Project Managers will meet periodically as required (typically at two-week intervals during the design phase of the project). These Progress Meetings will be used to coordinate the work effort and resolve problems, and the meetings will be required throughout the duration of the design of the project. The meetings will review the following:

- Recording and distributing meeting minutes by the Consultant.
- Activities completed since the last meeting.
- Review of updated construction cost estimates.
- Problems encountered.
- Activities required by the next progress meeting.
- Solutions for unresolved and anticipated problems and any late activities.
- Information or items required from other agencies and discuss agency coordination.
- Other required meetings are described in the following sections.

B. Review of Project Data

1. The selected consultant will be required to review the **Colorado Center Bicycle/Pedestrian Bridge Size and Location Study** document and confirm that the location selected best satisfies the City's goals for this project. If the consultant determines that a different location would

better serve the City's needs that location should be defined and reasons given for its recommended selection.

2. The Consultant, together with the CITY will be required to organize a minimum of two (2) public information meetings with the local neighborhoods and businesses on the north and south approaches, and various private and public agencies to discuss project issues.

3. Public Art

- The City is required to provide public art and anticipates hiring an artist during project development. The Consultant may be required to coordinate with the City's artist.
- All City projects over \$1,000,000 must comply with the Denver Public Art Ordinance, which became law in 1991 and requires that at least 1% of the construction budget must be devoted to Public Art. The Consultant must be familiar with the Public Art Requirements, and incorporate Public Art elements as required by the Denver Public Art Policy. (See the City's website: <http://www.denvergov.org/Portals/236/documents/Policy%20Book%20web.pdf>)

C. Preliminary Design

1. Field Survey - Initiate the field surveys and mapping for the affected areas. For activities requiring work on land not controlled by the City, the CONSULTANT will obtain the necessary written permission to enter the premises. The CONSULTANT will plan and provide any required traffic control for the survey, testing, or design.

- Depict topography, physical features and utilities on the base mapping along with existing right-of-way and property ownership. Prepare a survey control map that depicts locations of any project monuments. All work of surveying and installation of monuments shall be in accordance with City requirements, the CDOT Survey Manual, and applicable state statutes.
- Produce a planimetric map of the project area. Features located will include, but not be limited to, surface and subsurface drainage features, inlets, irrigation ditches, lawn irrigation, signs, mailboxes, fences, curbs, walls, driveways and/or curb cuts, sidewalks, and edges of pavements (asphalt and concrete), trees, etc..

2. Geotechnical Engineering: Investigate site soils and compile information in a draft report. The report shall include:

- Bridge foundation type discussion and recommendations
- Bearing values and recommended pressures for wall and paved surface designs
- Identification of areas of potentially contaminated soil

3. Structural Design: A Structure Type Selection Report, as prescribed by the CDOT Bridge Design Manual, will be provided for the bridge. It shall contain such information as:

- Discussion of various bridge structure types
- Comparative merits and deficiencies of each type, including aesthetic considerations
- Constructability issues related to each type
- Costs of each structure type, including life-cycle costs, incorporating maintenance and repair
- Recommended Structure Type (Selected Alternate)
- Fabrication / Erection/ Phasing plan for selected alternate

4. Additional Structural Design Requirements:

- Bridge substructure elements within 30 feet of any roadway will require design for a 400 kip impact load if a properly designed crash barrier is not provided between the roadway and the substructure, per LRFD Section 3.6.5 requirements.
- The bridge superstructure will also need to be evaluated for a 400 kip impact load that would theoretically result in the failure of lower bridge elements in such a collision. This is to assure that the overall bridge design has redundancy, and will not collapse as a result of the failure

of a major bridge element. Raising the bridge clearance to something greater than 17'-6" will not exempt the bridge design from this design requirement.

- Details for restraining the bridge at its supports will be required, to accommodate a 400 kip impact in proximity of the bridge bearings. Details that need to be considered in the design are side walls or tie-down devices at the bridge supports, should the bridge be dislodged from its bearings.
- Maintenance vehicle loads (H-5 or H-10, depending on final width) will need to be evaluated in the bridge design, per CDOT Bridge Design Manual subsection 2.2. This evaluation is recommended regardless of whether ramps access the superstructure or not.
- The pedestrian bridges constructed for RTD during the T-REX project had details (steel members similar to ladder rungs) accommodating inspectors climbing on the bridge arches – similar types of maintenance access details should be incorporated into the proposed bridge design at this site.

D. Site Development

- Identification of how bridge approach design relates to neighborhood plans – coordination with CITY agencies and neighborhoods
- Access/Movement Plan for bridge users, summarizing anticipated pedestrian, bicycle and ADA movements, location of ramps, stairs, walls, etc.
- Landscaping and Irrigation system layout
- Vertical and horizontal alignments of pathways / walls / stairs
- Preliminary site finishes study / colors / materials / treatments / street furniture
- Preliminary Lighting Design

E. Traffic Engineering

- Obtain vehicle traffic counts from CITY and CDOT records. Traffic patterns and requirements will be coordinated with the CITY Transportation Engineering Department and CDOT Region 6 Traffic for traffic detoured during construction of the project.
- Inventory existing traffic control features
- Prepare preliminary I-25 detour plan

F. Environmental Services

- The consultant will provide a Phase 1 assessment of potential hazardous wastes or materials that may be associated with the project site.
- The consultant will provide National Environmental Policy Act (NEPA) compliance evaluation and documentation (expected to be a categorical exclusion) for the project, in conjunction with CDOT.

G. Right-of-way

Perform the following work under the immediate supervision of a PLS:

- Identify existing ownership
- Coordinate with City staff (Asset Management) on right-of-way and easement requirements and agreements, and the scheduling of activities.
- Obtain assessor's map, locating project limits.
- Make physical inspection of property. Note any physical evidence of easements, etc.
- Check for latest subdivision plats and vacations of streets.
- Prepare preliminary right-of-way descriptions, easements and exhibits, if needed.
- Does not include preparing chain of title and looking for encumbrances, releases, etc.

The south approach to the bridge may require acquisition of property not currently City-owned for proper design of approach ramps. The property on the north side is owned by CDOT.

H. Adjacent Street Design: The bridge terminates near the intersection of Bellaire St. and Jewell Ave. on the north approach and on the southeast corner of the Colorado Center Drive/Frontage Road intersection on the south approach. The preliminary design shall address the extent to which these City streets and CDOT roadways are impacted, considering both geometry and traffic.

I. Utilities

- Obtain utility location maps from the Utility Companies, which identify utility facilities in the project area. The field survey will locate utility poles, manholes, valves, pedestals, guy wires, and other visible utility features. Underground utilities will be shown as marked by utility companies. Obtain invert elevations of manholes and vaults. Utility surveys will be accomplished within the project limits. Show the horizontal and vertical locations in the preliminary design plans and cross-sections. “Potholing” of utilities may be required at critical locations.
- Submit necessary information for the relocation or adjustment of affected utilities to the City. The Consultant will assist in coordinating the processing of the required agreements.
- The Consultant will attend coordination meetings with the affected utility companies as required.

J. Electrical Engineering: Provide preliminary design services for new improvements, including but not limited to lighting, security, surveillance and communication systems.

K. Construction Phasing Plan: Develop a construction-phasing plan which integrates the construction of all the project work elements into a practical and feasible sequence with particular attention to the project’s relation to I-25. Develop a preliminary traffic control plan that is compatible with the phasing plan.

L. Sign Structures: A significant impact from the Option 1 alignment will be the need to relocate 2 sign structures along I-25. A sign bridge along the northbound collector/distributor ramp will need to be reset approximately 100 feet further to the south from its current location to remain visible in front of the proposed pedestrian bridge crossing. A cantilevered sign along southbound I-25 will need to be reset approximately 75’ further to the north to remain visible as well. In both cases, it has been estimated that these relocations should result in meeting the requirements of the MUTCD, the governing standard for sign designs and locations. Resetting the signs will require some coordination with CDOT to verify appropriate locations, and coordinate impacts to traffic. The existing sign structures can be reused, and re-set on new foundations constructed at the new locations.

M. Preparation for the Preliminary Design Review Meeting

- Coordinate, complete and compile data from all activities: structural design, geotechnical, hydraulics, utilities, urban design, traffic, right-of-way, etc..
- Compile Preliminary Design Plans including title sheet, survey control sheet, ROW ownership map, existing site features, (including utilities), typical sections, general notes, plan/profile sheets, landscaping, existing and proposed topography, existing and proposed right-of-way, preliminary drainage design, geotechnical information, detour plans and construction phasing. The Preliminary Bridge General Layout (size, type and location summary) for the selected alternate will be included in the preliminary design plan set.
- Prepare a draft index of required construction specifications.
- Prepare the Preliminary Cost Estimate for the work described in the preliminary design plans based on estimated quantities.
- Typical full-size plan sheet scales will be as follows:
 - Plan and Profile: 1 inch = 20 feet
 - The original sheets shall be 22 inches by 34 inches, and the maximum size of

the content, including the border, shall be 20 inches by 31.5 inches.

- Reproduce and distribute the plans (half-size) to the CITY, utility companies and other stakeholders for review two (2) weeks prior to the preliminary design review meeting.

N. Preliminary Design Review Meeting

- Organize and conduct the Preliminary Design Review meeting.
- Prepare Preliminary Design Review meeting minutes. Distribute minutes, approved by the CITY, as directed.
- Resolve design questions raised in the Preliminary Design Review meeting in cooperation with the CITY. Document the decision and transmit the documentation to the CITY for approval.
- Submit a list of all deviations from standard design criteria along with the written justification for each one.
- Obtain concurrence from affected agencies or utility companies.

O. Preliminary Public Information Meeting: Conduct an informal project open house in the project neighborhood in the north landing area and in the south landing area to inform area property and business owners of the project progress and project features. Fully document the results for CITY decision makers.

P. Project Consensus: The Consultant must work closely with all parties to build a solid consensus for the project features.

Section 8. Final Design and Pre-Construction Phase

A. The Consultant will develop a final construction bid package in accordance with City requirements and the requirements of the LACA (Local Agency Certification Acceptance) program for federally-funded projects. Major elements will include:

- Design Coordination
- Geotechnical Engineering
- Structural Design (Structural design will include an Independent Design, Detail, and Quantity Check per CDOT Bridge Design Manual Section 19)
- Civil Engineering (Roadway and Drainage)
- Site Development / Urban Design
- Traffic Engineering
- Right-of-Way
- Utilities
- Electrical Engineering
- Project and Structure Phasing
- Final Construction Bid Package (Final Plans, Specifications and Cost Estimate)
- Final Design Review Meeting
- Record Plans

Section 9. Bidding, Bid Evaluation, and Construction Phase

A. Pre-Bid Meeting: The Consultant will attend the pre-bid meeting and site visit (if held) to respond to inquiries and requests for interpretation by prospective bidders.

B. Bid Evaluation & Assistance: The Consultant will assist the City in preparing written responses or addendum material as required.

- The City shall distribute such responses and addenda to prospective bidders.
- The Consultant will assist the City in reviewing, checking, evaluating and tabulating bids.
- The Consultant will advise the City on the acceptability of substitutions of materials, equipment or construction methods suggested by prospective bidders prior to bid opening.

C. Consultant Construction Services **(This work may be added to the design consultants contract after the bidding phase but will not be included in the original contract)**

- Consultant will attend the Pre-construction meetings. Consultant will supply the bid documents (Number of sets to be determined) including pre-bid data, addenda, signature forms, and procedures. The CITY will approve all materials prior to distribution.
- In addition to those terms set forth in the final contract, the Consultant **SHALL, IF REQUESTED**, provide the following services during construction:
 1. Promptly provide periodic observations of construction progress to assure work is in conformance with the intent of the construction documents.
 2. Review and approve shop drawings, colors and materials.
 3. Provide clarification of design details as requested.
 4. Prepare contract modifications or change orders as necessary.
 5. Submit typewritten reports identifying activities in progress or actions taken while making periodic site observations during the construction period.
 6. The Consultant will also identify any special activities for this phase which might require additional work effort and the estimated expense.
 7. The Consultant will prepare “as-built” drawings.

Section 10. General Information

Under the City Charter, the Manager of Public Works is charged with the management and control of public improvement projects. The City expects that this RFP and selection process will result in the selection of a Consultant and affiliated team to be retained in a professional capacity for the development and execution of the professional services described above.

This RFP solicitation is issued by the Manager of Public Works pursuant to the authority vested in the Manager by the Charter of the City and County of Denver. As its best interests may appear, the Manager of Public Works reserves the right to terminate, modify or suspend the process, reject any or all submittals, modify the terms and conditions of this selection process and/or waive informalities in any submission.

This project will be administered by: The Manager of Public Works

A. RFP Administration:

The Manager hereby designates Elizabeth Sample, Public Works Contract Administration to serve in the capacity of administrator for this selection process and will be responsible for coordination of the procedures and rules specified in this RFP, managing this process and all other matters related to this process. In conducting the process in a fair and equitable manner, the administrator will serve as the primary intermediary between the design professionals, the City, and the members of the Selection Committee. All inquiries and questions regarding this RFP shall be directed to Elizabeth Sample in the Public Works Department in writing via email at Elizabeth.sample@denvergov.org. Any applicant that contacts any member of the Selection Committee, other than the designated contact from the date of issuance of the RFP and prior to the completion of the selection process may be disqualified from further participation in the selection process, at the administrator's sole discretion.

B. City Representative: James Hamblin is the City representative (Project Manager) authorized to administer the Professional Services Agreement and directs and approves all services provided and work performed thereunder.

C. Funds:

The estimated cost of construction is \$6.0 Million. The City liability for expenditure of public funds pursuant to this proposal shall be contingent upon and limited to the appropriation of funds for the Agreement to the successful proposer by the Denver City Council and payment of such funds into the Treasury of the City.

D. Project Manager:

The Consultant shall be directed by the Project Manager and work closely with the Client Agency, City regulatory agencies, all public utilities, the Construction contractor and other City agencies throughout the project life including the warranty phase. The Project Manager shall have the right to reject inaccurate or substandard work and cause such rejected work to be satisfactorily corrected without additional cost to the City.

E. Local Presence:

All firms participating in this project must be licensed in the State of Colorado and have a production office located within a two hour drive from the Denver metropolitan area. A firm not already so located must establish such a local office if awarded this project, or associate itself with a firm so located. This is necessary to facilitate day-to-day communications and coordination and to insure timely response to investigate and resolve design and construction issues.

F. Verification of Information:

Applicants are hereby notified that the City will rely on the accuracy and completeness of all information provided in making its selection. As such, Applicants are urged to carefully review all information provided to ensure the clarity, accuracy and completeness of such information. As the City deems necessary and appropriate in its sole discretion, the City reserves the right to make any inquiries or other follow up required to verify the information provided.

G. Discrimination in Employment:

In connection with the performance of work on this project, the selected Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, gender variance, age, military status, sexual orientation, marital status, or physical or mental disability; and the contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

H. Applicable Laws:

This selection process and the performance of any selected proposer shall be subject to, governed by and construed in accordance with the laws of the State of Colorado and the Charter, Revised Municipal Code, Rules, Regulations, written policies and Executive Orders of the City and County of Denver, as the same may be amended from time to time.

I. Addenda:

As the City may require, addenda may be issued to supplement this RFP. Each Proposer shall provide the City with contact information for receipt of such addenda. Any applicant who downloads the RFP from www.denvergov.org/DPW_Contract_Admin, or otherwise obtains this document, must send an e-mail to elizabeth.sample@denvergov.org with the party's contact information. It shall be conclusively presumed that the applicant did, before submitting a Response to the RFP read all addenda, posted decisions, and other items relevant to the qualifications. All addenda shall be acknowledged by Proposer and returned to the City with proposal document.

J. Contract Review.

Proposers shall undertake a detailed review of the *Sample Professional Services Agreement* (Attachment 2) and submit with their proposal a list of all questions, issues, or modifications which the Proposer would like the City to review and address, should they be selected as the top ranked proposer. The City shall assume that the Sample Professional Services Agreement has been thoroughly reviewed and discussed with legal counsel prior to submission of the list of issues. Therefore, all proposers are strongly advised to seek legal counsel prior to preparing such a list.

1. The City anticipates that the final Agreement submitted to the selected Proposer for execution will be in a form substantially similar to Attachment 2. Consequently, the City will not enter into detailed negotiations of the terms and provisions contained in the sample agreement. Instead, the City will review the list of issues raised by the selected Proposer, address each issue at its sole discretion and provide the selected Proposer with a final executable Agreement for signature.
2. In the event the City elects to make significant, material changes to the form provided or proceed with another agreement format, the City will provide the selected proposer with an opportunity to review and submit a list of issues regarding the changes or new format. The City will then address the issues raised at its sole discretion and provide the selected Proposer with a final executable Agreement for signature.
3. Should the Proposer fail to execute this final Agreement, the City reserves the right to negotiate with the Proposer, terminate further negotiations and initiate negotiations with another ranked proposer or reject any or all Proposers, as its best interests may appear.

K. Colorado Open Records Act.

Documents submitted in response to this RFP will be subject to the Colorado Open Records Act, C.R.S. §§ 24-72-201, et. seq. (“CORA”). Information clearly marked as confidential and proprietary will be kept confidential by the City, unless otherwise provided by law. CORA prohibits the City from disclosing trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished to it by any person, in response to a request under CORA. If the City receives a request for such information, it will notify the Proposer so that the Proposer may confirm which information in its Proposal is confidential. If a suit is filed to compel disclosure of such information, the City will notify the Proposer, and the Proposer shall be responsible for taking appropriate action to defend against disclosure of its confidential information.

L. Submission Ownership, Use and Rights:

The City reserves the option of retaining any or all of the materials and drawings submitted by the Proposers/Respondents to this RFP. Any unique or exclusive design concepts or features represented in the submission documents shall remain the property of the authoring Design Consultant. They may not be used by the City or other parties to design or construct any facility, in whole or in part, without the further agreement of, and compensation to, the authoring party.

M. Minority and Women Business Enterprise (M/WBE) Requirements:

All proposers must carefully review the detailed requirements for compliance with the M/WBE program, which are set forth in Section below.

N. Consultant Disclosure:

Section 20-69 of the Denver Revised Municipal Code provides that the public interest is best served by maximum disclosure of political contributions made to candidates seeking election to City office by persons transacting business with the City and County of Denver. This Disclosure Form was devised to insure that City Bidder/Contractor/Vendor/Proposers comply with all

applicable requirements of Section 20-69, D.R.M.C. All proposers must complete all applicable sections of this disclosure and submit with their proposals.

O. Contract Negotiation

During negotiation of any contract, the proposer shall be asked to submit the following:

1. An audited statement of overhead rates, payroll taxes, and operating (profit) margin used to calculate hourly billing rates for City and federal review and approval. This statement shall cover the Consultant's most recently completed fiscal year and shall be signed by a certified public accountant as a Certified Audited Statement in which the accountant expresses his or her opinion on the fairness with which the statement represents the Consultant's financial position, results of operations and changes in financial position.
2. If the Consultant is a partnership or joint venture, a Certified Audited Statement is required for each partner or joint venture. If any individual owns thirty-two percent (32%) or more of the Consultant, a Certified Audited Statement is required for each such individual or if a Certified Audited Statement is not available, then the individual must supply copies of his or her federal tax returns for the prior two (2) years.
3. If a Consultant is a small business as defined by the United States Small Business Administration, then the Consultant may elect to submit copies of its Federal tax return for the prior two (2) years in lieu of a Certified Audited Statement.
4. A signed statement stating that no material or significant changes have occurred since the date of completion of the Certified Audited Statement, or the filing of the Federal tax return and the date of the proposal.

Section 11. Insurance and Indemnification Required

The selected Proposer for this Project shall be required to strictly comply with the Insurance and Indemnification requirements set forth in the *Sample Professional Services Agreement* (Attachment 2). The selected Consultant, all other primary firms and all sub consultant firms performing work or providing services for the Project will be required to obtain insurance coverage in the amounts and under the terms and conditions specified therein. As such, each Proposer shall submit with its Response, a statement indicating the firm's intention to comply with the requirements of this section if selected by the City to review the format and requirements, terms and conditions the Consultant and its sub consultants must comply with as a part of the Agreement for this project.

Section 12. Proposal

Each respondent must comply with the submission requirements as outlined below. Submittals that fail to comply with the requirements as specified may be deemed non-responsive and such determination will result in no further consideration of that respondent or the respondent's submittals by the City.

- A. City Selection Committee:** The Selection Committee is charged with the responsibility of reviewing and evaluating all responsive submittals and other information received in accordance with the requirements of this RFP, later directives from the City and the official advertisement. In assessing the strengths and weaknesses of each respondent, the Selection Committee may, at its discretion, request clarification of any response to this RFP or other issue that may arise during the selection process. The City reserves the right to include or allow the Selection Committee to consult with any additional, non-voting "commentators" during the selection process.

The Selection Committee for this Project is comprised of:

James Hamblin – Public Works, Capital Projects Management (Project Manager)
James Barwick - Public Works, Capital Projects Management
Dan Groeneman - Colorado Department of Transportation
Steve Gordon - Community Planning and Development
Janice Finch - Public Works, Policy and Planning
Tracy Halasinski – Mayor’s Bike Advisory Committee
David Marquardt – Parks and Recreation

B. Selection Process Overview: The RFP selection process for the project Consultant will proceed, under the oversight and direction of the Project Manager in accordance with the following stages:

1. As provided for in the RFP documents, selected Consultant, as screened by a City Selection Committee, will be invited to participate in the interview and proposal phase. The Design Selection Committee will make the final selection and recommendation following a comprehensive RFP evaluation process.
2. In making the selections under this RFP, the City and the Selection Committee will focus on the submittals and presentations of the applicants, general qualifications and prior history of performance in accordance with the selection criteria set forth in this RFP.
3. The selection process for the Consultant will proceed with the following stages:

- *Stage I: Submission of Printed Proposal, and all applicable forms (forms do not count toward page limit totals.)*
- *Stage II: Oral Interview*

Finalists will be asked to state their understanding of the Project, offer their methodology for meeting the design criteria, and state how they will interface with the City and the internal project management team.

4. At any stage, the City reserves the right to terminate, suspend or modify this selection process; reject any or all submittals at any time; and waive any informalities, irregularities or omissions in submittals, all as the best interests of the City may appear.
5. The City will not accept any information, in any form whatsoever, from Proposers after the proposal due date. Unsuccessful Proposers will be notified in writing that they were not selected to compete in the next stage of the selection process and such notification shall result in no further consideration of these submissions. All determinations of the City regarding rejection shall be final.

C. Selection Criteria:

Proposals will be rated by the committee according to the following criteria, using a 50 point scale. Teams rated the highest according to this criteria will be invited to an interview.

1. Qualifications and experience of the firm in the professional areas listed in this RFP. **(10 points)**
2. Qualifications and experience of the Project Manager, Project Engineer, and other Key Personnel (including subcontractors) in the professional areas listed in this RFP and in similar projects. **(10 points)**

3. Proposed approach to completing the scope of work. Philosophy and understanding of the project and project issues. **(15 points)**
4. Proposed utilization, commitment, and management of project team and work tasks; including project schedule. **(5 points)**
5. Ability to communicate and build project consensus, proposal completeness; ability to provide all of the necessary coordination to complete the project, including coordination with various public agencies, utilities, and adjacent property owners/ citizen groups using the public involvement process. Determination of items to be included in the project which balance the needs and objectives of the project stakeholders.– **(10 points)**

D. Submission Ownership, Use and Rights:

The City reserves the option of retaining any or all of the materials and drawings submitted by the Proposers/Respondents to this RFP.

Any unique or exclusive design concepts or features represented in the submission documents shall remain the property of the authoring Design Consultant. They may not be used by the City or other parties to design or construct any facility, in whole or in part, without the further agreement of, and compensation to, the authoring party.

E. Proposal (RFP):

Proposers shall submit twelve (12) copies of their completed RFP response. All Proposals must be limited to the following prescribed information and be submitted in an 8 ½” x 11” format and be bound in a comb binder, not submit in a loose-leaf, three-ring, hard cover binder. Pages are to be numbered in sequence and font size will be at least 11pt. font. If divider sheets are used, no information, written or graphic, other than the section number corresponding to the following listing is to be included on the divider sheet. Proposals shall not exceed 25 single-sided pages in length (double-side pages count as two pages). This page limit does not include cover pages, divider sheets, or required forms. Pages that are submitted which are related to MBE/WBE Requirements will not be counted as a portion of the allowable 25 pages. The Consultant Disclosure must be submitted single-sided.

The List of Forms to be included with proposal includes:

- Attachment 1 – Consultant Disclosure Form
- Attachment 3 – Joint Venture Eligibility Form (*if applicable*)
- Attachment 4 – Joint Venture Affidavit (*if applicable*)
- Attachment 5 –M/WBE Letters of Intent
- Attachment 6 – Consultant Team Members

Part 1 Letter of Transmittal. Clearly indicate the *single contact* (principal-in-charge), mailing address, telephone and facsimile numbers.

Indicate unique features of the organization and the project team that makes the team uniquely suited to undertake this specific project.

Part 2 Key Personnel. Identify the individuals from each firm who will be involved in the project and their responsibilities. Provide brief *biographical data* of the primary participant(s), including the lead designer(s) and the Project Manager, if different. Identify the organization and percentage of time for which the key individuals of the team are committed to the project. Include major subconsultants.

Part 3 Team Members. Identify the proposed subconsultants/subcontractors that will be part of the team with a brief description of services they will provide. (Use Attachment 6, in the

Appended Materials in this RFP). Describe the capacity of each firm to do the work. State whether the firms have previously worked together, and if so, in what capacity. Indicate all firms with MBE/WBE status. *(Please ensure that this list matches exactly the data on the corresponding, signed, Letters of Intent.)*

Part 4 Organization and Management of the project.

- a. Describe how the project will be organized, both internal to the design team and how coordination with the project stakeholders & CDOT will be undertaken.
- b. For the project team, summarize what work the Consultant will self perform and what work will be performed by sub consultants.
- c. Describe the team's design and management approach to the project. Describe how the team will accomplish the work in a thorough, effective, and timely manner. Include information regarding:
 - Philosophy, approach and identification of specific issues, problems and opportunities. (Specific solutions to this project are not desired as statements of philosophy or direction).
 - Management approach to insure effective coordination with various City agencies and other entities which will be involved in the Project.
- d. All proposers must provide a preliminary, final, and bid documents phase schedule assuming that design work is to begin on the above referenced Contract Execution/NTP date.
- e. Indicate how the construction budget will be maintained.
- f. Identify any design and project management software that may be proposed for use on this project.

Part 5 Project Experience.

Describe the team's experience in similar projects, and in the disciplines necessary to fulfill the project requirements. Specify the roles performed in these projects by the key personnel and proposed contact persons for each project. Photos are encouraged and may be appended to the proposal. Provide:

- Examples of previous similar projects that involved transportation engineering, public relations, and related Professional Design Services for bridge construction and improvement projects which have similar size and work elements to those identified in this request for proposal.
- Relevant examples of project budgeting, cost estimating, results, e.g., estimated cost vs. bids and final project costs on projects of similar size and scope.
- Greenprint Denver and other environmentally conscious guidelines will be part of this project. Provide examples of the Consultant teams' experience with sustainable development in roadway projects (use of recycled materials, reclamation design, etc.).

F. Oral Presentation:

1. Short Listed Proposers will be invited to make an oral presentation to the Selection Committee, as well as User and City Representatives at a time and place to be determined by the City. The approximate date is indicated in Section 1. The oral presentation shall not exceed 40 minutes in length, followed by up to twenty minutes for questions by the Selection Committee. Each proposer shall be represented by at least one member of their firm as well as selected sub consultants of their choosing.

Section 13. Minority and Women Business Enterprise (M/WBE) Requirements

The Goals Committee has established the minimum percentage for this contract to be 12%

Request for Proposal (RFP) Requirements:

The proposer is required to list their proposed Minority and Women Business Enterprise (MWBE) participation. All requirements listed below will need to be followed by proposers when submitting their proposals.

Professional design and construction Program's Rules and Regulations adopted by the Director of the Division of Small Business Opportunity (DSBO), which will be incorporated into any agreement entered into as part of this selection process.

Article III, Division 1 of Chapter 28 D.R.M.C. provides for the adoption of a MBE/WBE Business Enterprise Goals Program to be administered by DSBO. As such, each proposer must comply with the terms and conditions of this division in submitting its proposal and, if awarded the Contract, in performing all work thereunder. A proposer's failure to comply with the requirements and any Rules or Regulations promulgated pursuant thereto, or any additional requirements contained herein shall render its proposal non-responsive and may constitute cause for rejection.

The MBE/WBE Business Enterprise Goals Program Ordinance and its Rules and Regulations can be reviewed by proposers on DSBO's web site at www.milehigh.com/business/do-business.

In order to comply with the proposal requirements of Article III, Divisions 1 and 3 of Chapter 28 of the Denver Revised Municipal Code, a proposer shall either meet the specific MBE/WBE goal for this project or, in the alternative, demonstrate that the proposer has made sufficient good faith efforts to meet the goal in accordance with good faith provisions listed in D.R.M.C. 28-67.

In preparing a proposal that seeks to comply with D.R.M.C. 28-65 requirements by meeting the Project goals, proposers should consider the following instructions relating to compliance:

1. The Director of the DSBO has established a project goal for expenditures for professional design services performed for the City and County of Denver. The specific goals for this project are as stated in the Request for Proposals bound herewith.
2. In preparing its proposal to meet the goal, each proposer must complete and submit with its proposal, a List of Proposed MBEs and/or WBEs, subconsultants and suppliers. At a minimum, this list must contain the following information: the name, the address, a brief description of the supply/service to be performed, the committed level of participation expressed as a percentage and, as applicable, an actual dollar amount and any other required information for each MBE or WBE, of any tier, which the proposer intends to utilize in performing services or supplies on this Project. Only the MBEs or WBEs identified on the list and only the precise levels of participation committed to for each MBE or WBE listed on a Consultants participation page at the time the proposal is submitted will be considered in determining whether the proposer has met the MBE/WBE goal. Subsequent additions, revisions or corrections to

participation will not count towards meeting the Project goal.

MBE or WBE Prime Consultant may count only the value of the work that it self-performs towards the MBE/WBE project goal. In a joint venture with a MBE(s) or WBE(s) only the portion equal to the distinct and clearly defined scope of work performed by the MBE(s) or WBE(s) counts in meeting the MBE/WBE project goal.

3. All MBE or WBE firms listed within the proposal document must be properly certified by the City on or before the date of proposal submission in order to count towards meeting the goal. The City maintains a MBE/and WBE Directory, which contains currently certified firms. The DSBO MBE/WBE Directory can be accessed on its website at www.milehigh.com/business/do-business. Proposers are encouraged to use this list to assist in locating MBEs and/or WBEs for the services/supplies required on the Project. Proposers are hereby notified that changes may be made to the list at anytime and the most current certification list must always be used in preparing a proposal. MBE or WBE certification does not, however, constitute a representation or warranty by the City as to the qualifications of any listed MBE or WBE firm.

4. In accordance with D.R.M.C. 28-69, DSBO will evaluate each proposal to determine the responsiveness of the proposal to the MBE/WBE requirements. In determining if a proposer identified MBEs and/or WBEs and committed levels of participation comply with the Divisions 1 and 3 of Article III of Chapter 28, D.R.M.C. requirements and, more specifically, met or exceed the stated MBE/WBE goal; DSBO shall base its determination solely on the information provided in the proposal document.

a. In reviewing committed levels of participation to determine whether or not the stated commitments meet the goal, DSBO will evaluate and total the levels presented using the following process. If the City requests a lump sum or maximum fee amount as part of the proposal process, DSBO will total the actual dollar amount and corresponding percentage amount of participation stated for each M/WBE firm listed. If the City does not require a lump sum or maximum fee amount as part of the proposal document, DSBO will total only the percentage amount of participation stated for each MBE or WBE firm listed.

b. If actual dollar amounts are required, DSBO will determine the exact commitment percentage for each listed MBE or WBE firm by dividing the dollar amount listed for each firm by the lump sum or maximum fee dollar amount submitted by the proposer. These individual percentages, when totaled for all listed MBEs and WBEs will establish the total committed percentage level of MBE/WBE participation that the proposer must comply with during the life of the Agreement. In all cases, the committed percentage level of MBE/WBE participation must equal or exceed the assigned MBE/WBE goal in order to comply with the Divisions 1 and 3 of Article III of Chapter 28, D.R.M.C.

c. When calculating participation levels, percentages or dollar amounts for each listed MBE or WBE to ensure compliance with the goal, a proposer must never round up in determining whether or not the total of these amounts meets or exceeds the particular percentage goal. The goal must be met or exceeded in percentage amounts and, where applicable, in actual dollar amounts for DSBO to determine that the proposer has met or exceeded the goal.

d. On proposals where a MBE or WBE supplier is listed for participation, its participation will count one hundred percent (100%) of the value of the commercially useful function performed on contracts of less than Five Million Dollars (\$5,000,000). However, on contracts of more than Five Million Dollars (\$5,000,000) a supplier's participation will count for only sixty percent (60%) toward satisfaction of the Project goal.

e. Unless otherwise specified in a request for qualifications, request for proposal, or other proposal solicitation, all proposals for the provision of on-call services for a period of time and with no delineation of the dollar amount for specific on-call projects, the proposer need list only the anticipated percentage

level of committed participation for each listed MBE or WBE, rather than specific dollar amounts.

5. In addition to the above referenced list, each proposer is required to fully complete, have executed and submitted a "MBE/WBE Letter of Intent" for each MBE or WBE listed in their proposal document as a subconsultant or supplier. **A MBE or WBE Prime Consultant needs to submit a Letter of Intent for itself.** The MBE or WBE Prime must list itself and its level of participation on the page the proposer has designated for MBE/WBE participation within its proposal submittal package. A MBE/WBE Letter of Intent form is attached hereto. This Letter of Intent is a written communication from the Proposer to the City evidencing an understanding that the Proposer has or will enter into a contractual relationship with each named MBE or WBE subconsultant and supplier. Each MBE/WBE Letter of Intent shall be accompanied by a copy of the City and County of Denver's MBE certification letter for the named MBE/WBE. Proposers are urged to carefully review each Letter of Intent before submission to ensure that it is properly completed and executed by the appropriate parties. All MBE/WBE Letter/Letters of Intent shall be submitted with the proposer's proposal.

In preparing a proposal, which seeks to comply with D.R.M.C. 28-67 by demonstrating a good faith effort, proposers should consider the following instructions relating to compliance with the MBE/WBE requirements:

If any Proposer is unable to meet the designated Project goal at the time of proposal submission or elects to present a good faith effort in lieu of or in addition to attempting to meet the goal, that Proposer must submit, with or before the submission of the proposal, a detailed statement, including supporting documentation, demonstrating its good faith efforts to meet the established MBE/WBE goal in accordance with D.R.M.C 28-67. This statement shall address each of the items identified in the good faith effort.

A Proposer who fails to meet the Project goal and cannot show to the Director's satisfaction that it made an adequate good faith effort to meet the goal shall be considered non-responsive.

1. The statement of good faith efforts shall include a specific response to each of the following criteria, as further defined by rule or regulation. In addition, a Proposer may supplement its responses to include any additional information the Proposer believes may be relevant. Failure of a Proposer to demonstrate adequate good faith efforts as to any one (1) of the following categories shall render the overall good faith showing insufficient and the proposal non-responsive. The required MBE/WBE good faith efforts are set forth below:

- a. If pre-proposal meetings are scheduled by the City at which MBEs and WBEs may be informed of subconsulting or joint venture opportunities under a proposed negotiated professional design and construction services contract, attendance at such pre-proposal meetings is not mandatory; however, proposers are responsible for the information provided at these meetings.
- b. The proposer must solicit through all reasonable and available means the interest of all MBEs and WBEs certified in the scopes of work of the contracts. The proposer must solicit the interest of such MBE's and WBEs within sufficient time, prior to the date of the final project-specific proposal, to allow such MBEs and WBEs to respond to the solicitation. The proposer must determine with certainty if the MBEs and WBEs are interested by demonstrating appropriate steps to follow up initial solicitations.
- c. The proposer must select the portions of the services of the contract to be performed by MBEs and WBEs in order to increase the likelihood that the project goal will be achieved. This includes, where appropriate, using best efforts to break out contract services into economically feasible units to facilitate MBE and WBE participation as subconsultants or joint venturers, and for proposer self-performed work, as suppliers, manufacturers, manufacturer's representatives and brokers, all reasonably consistent with industry and professional practice, even when the proposer would otherwise prefer to perform these with its own staff. The proposer must identify what

portions of the contract will be self-performed and what portion of the contract were selected for solicitation of statements of qualification or proposals from MBEs and WBEs. All portions of the contract not self-performed must be solicited for MBE and WBE participation. The ability or desire of a proposer to perform the services of a contract with its own staff does not relieve the proposer of the responsibility to meet the project goal or demonstrate good faith efforts to do so.

- d. The proposer, consistent with industry and professional practice, must provide MBEs and WBEs at a clearly stated location with timely, adequate access to and information about the plans specification, and requirements of the contract, including insurance requirements, if any, to assist them in responding to a solicitation.
- e. The proposer must negotiate in good faith with interested MBEs or WBEs and provide written documentation of such negotiation with each such MBE or WBE.
- f. For each MBE or WBE contacted, or which the proposer contacts or attempted to subconsultant or joint venture with consistent with industry and professional practice, the proposer must supply a statement giving the reasons why the proposer and the MBE or WBE did not succeed in negotiating a subconsultant, supplier, manufacturer, manufacture's representative, broker or joint venture agreement, as applicable.
- g. The proposer must provide verification that it rejected each non-utilized MBE and WBE because the MBE or WBE was not qualified. Such verification shall include a verified statement of the proposals received from potential or utilized subconsultants, suppliers, manufacturers, manufacturer's representatives or brokers on the contract, whether or not they are MBEs or WBEs. In making such a determination of not being qualified, the proposer shall be guided by the definition of qualified in section 28-54(42). For each MBE or WBE found not to be qualified by the proposer, the verification shall include a statement giving the proposer's reasons for its conclusion. A proposer's industry or professional standing or group membership may not be the cause of rejection of an MBE or WBE. A proposer may not reject an MBE or WBE as being unqualified without sound reasons based on a reasonably through investigation and assessment of the MBE's or WBE's capabilities and expertise.
- h. If requested by a solicited MBE or WBE, the proposer must make reasonable effort to assist interested MBEs and WBEs in obtaining alternative payment or performance guarantees or insurance as required by the City or by the proposer, provided that the proposer need not provide financial assistance toward this effort.
- i. If requested by a solicited MBE or WBE, the proposer must make reasonable efforts to assist interested MBEs and WBEs in obtaining necessary and competitively priced equipment, supplies, materials, or related assistance or services for performance under the contract, provided that the proposer need not provide financial assistance toward this effort.
- j. The proposer must use the DSBO MBE/WBE directories to identify, recruit and place MBEs and WBEs.

In determining whether a proposer has satisfied good faith efforts as to a project goal, the success or failure of other proposers on the contract in meeting such project goal may be considered.

In accordance with the provisions of Divisions 1 and 3 of Article III of Chapter 28, D.R.M.C., the proposer agrees that it is committed to meeting either the MBE/WBE participation goal or the MBE/WBE participation set forth in its statement of good faith efforts. If a Good Faith Effort was performed, that documentation must be submitted in the proposer's proposal at the time of proposal submission. The proposer must indicate either commitment on a page it designates as the "Commitment to MBE/WBE Participation". This fully executed statement of commitment must be included with the proposal and

must address and confirm the following understandings:

1. The Consultant understands it must maintain the designated MBE/WBE goal or good faith commitments throughout the life of the Agreement, in accordance with the requirements set out in D.R.M.C. 28-72.
2. The Consultant understands that it must establish and maintain records and submit regular reports, as required, which will allow the City to assess progress in satisfying the MBE/WBE participation goal.
3. The Consultant understands that if amendments or any other agreement modifications are issued under the Agreement, the Consultant shall have a continuing obligation to immediately inform DSBO, in writing, of any agreed upon increase or decrease in the scope of work of such Agreement, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.
4. The Consultant understands that if amendments or other Agreement modifications are issued under the Agreement and such changes result in an increase in scope of services in an Agreement or otherwise increase the dollar value of the Agreement, whether or not such change is within the scope of work designated for performance by a MBE or WBE at the time of contract award, such changes shall be contemporaneously submitted to DSBO. Those changes, of any kind or nature, that involve a changed scope of work that cannot be performed by existing project subconsultants or by the consultant, shall be subject to goals for MBEs or WBEs equal to the original goals on the Agreement. The consultant must satisfy such goals as respects to such changed scope of work by soliciting new MBEs or WBEs as applicable pursuant to D.R.M.C. 28-73, or must show each element of a modified good faith effort pursuant to D.R.M.C. 28-75(c). The consultant shall supply to the Director for approval, the modified good faith effort documentation as required by D.R.M.C. 28-75(c).

All proposers are charged with knowledge of and are solely responsible for complying with each and every provision of Divisions 1 and 3 of Article III of Chapter 28, D.R.M.C., in submitting a proposal and, if awarded, in performing the services or supplies described in the Agreement. Failure to comply with these provisions may constitute cause for rejection of a proposal or subject the selected Consultant to sanctions. These instructions are intended only to generally assist the proposer in preparing and submitting a compliant proposal, should any questions arise regarding compliance under specific circumstances, proposers must consult Divisions 1 and 3 of Article III of Chapter 28, D.R.M.C., and its accompanying Rules and Regulations and are encouraged to contact the designated DSBO project representative at (720) 913-1999.

APPENDED MATERIAL

Attachment 1 – Consultant Disclosure Form

Attachment 2 - Sample Design Services Agreement

Attachment 3 - Joint Venture Eligibility form

Attachment 4 – Joint Venture Affidavit

Attachment 5 – Letter of Intent

Attachment 6 - Consultant Team Members

- End -

Attachment 1
CITY AND COUNTY OF DENVER
DEPARTMENT OF PUBLIC WORKS

BIDDER/CONTRACTOR/VENDOR/PROPOSER DISCLOSURE FORM

Bidding Entity's/Proposer's Name

Date this form was completed

Address

(____)_____
Telephone Number

City, State, Zip Code

Name of Officer/Owner completing this Form

INSTRUCTIONS

1. Section 20-69 of the Denver Revised Municipal Code provides that the public interest is best served by maximum disclosure of political contributions made to candidates seeking election to City office by persons transacting business with the City and County of Denver. This Disclosure Form was devised to insure that City Bidder/Contractor/Vendor/Proposers comply with all applicable requirements of Section 20-69, D.R.M.C.

2. Complete each applicable Section of this Form in accordance with the following instructions and return it to the appropriate City official as directed.

3. If your business entity has previously submitted a Form **and** the information provided in this previously submitted Form **has not changed**, you need only complete Section 6 and return the Form.

4. If your business entity has not previously submitted a Form or any of the information contained in a previously submitted Form **has changed**, you must identify in Section 1 the **name of each** of the following for your business entity: (a) any director, (b) any officer, (c) any principal, (d) any owner and (e) any shareholder who owns or controls 5% or more of your entity.

5. If you are required to complete Section 1, you must also **EITHER**:

(A) Identify in Section 2, for each person listed in Section 1, that person's spouse, if any, and any children of that person, under the age of eighteen (18);

OR

(B) Identify in Section 3, any person listed in Section 1 and any spouse or age eighteen (18) or under child of any person listed in Section 1 that made a CONTRIBUTION, as defined in D.R.M.C. 15-32, to any CANDIDATE, as also defined in D.R.M.C. 15-32, during the last five (5) years,

AND

Certify in Section 4 that, except as disclosed in Section 3, no other person listed in Section 1 or any spouse or child under the age of eighteen (18) of any person listed in Section 1 made a contribution to any candidate, as these terms are defined in D.R.M.C. 15-32, during the last five (5) years.

6. And finally, if your bid/contract/purchase order/proposal includes subcontractors, subconsultants or suppliers receiving **more than** \$100,000.00 for any work performed, materials provided or services rendered **or** your business entity has a collective bargaining agreement with any union, you must identify each such subcontractor/subconsultant/supplier and each such union in Section 5.

SECTION 1. MUST BE FILLED OUT BY ALL BIDDER/PROPOSERS/CONTRACTORS/VENDORS:

Identify below each individual having the noted relationship with the business entity listed above. Show appropriate letter in the box to the left. A = Officer, B= Director, C = Principal, D = Owner, E= Controller of 5% or more of the stock. If more than one category applies, show in second box.

- | | |
|------------------|-------------------|
| 1. [] [] _____ | 9. [] [] _____ |
| 2. [] [] _____ | 10. [] [] _____ |
| 3. [] [] _____ | 11. [] [] _____ |
| 4. [] [] _____ | 12. [] [] _____ |
| 5. [] [] _____ | 13. [] [] _____ |
| 6. [] [] _____ | 14. [] [] _____ |
| 7. [] [] _____ | 15. [] [] _____ |
| 8. [] [] _____ | 16. [] [] _____ |

EITHER FILL OUT SECTION 2 OR SECTION 3 AND SECTION 4 IF APPLICABLE.

SECTION 2. Identify below each individual that is the spouse or a child under the age of eighteen (18) of any individual listed in Section 1 above. Use the first box to designate relationship as follows; F = Spouse, G = Child under 18. Use the second box to identify relationship to person listed in Section 1 above. For example, if on Line 3 of Section 1 the name of John Doe is listed and his spouse, Jane Doe is listed on line 7 of Section 2, the number 3 should be placed in the second box of line 7 of Section 2.

- | | |
|------------------|-------------------|
| 1. [] [] _____ | 9. [] [] _____ |
| 2. [] [] _____ | 10. [] [] _____ |
| 3. [] [] _____ | 11. [] [] _____ |
| 4. [] [] _____ | 12. [] [] _____ |
| 5. [] [] _____ | 13. [] [] _____ |
| 6. [] [] _____ | 14. [] [] _____ |
| 7. [] [] _____ | 15. [] [] _____ |
| 8. [] [] _____ | 16. [] [] _____ |

SECTION 3. DISCLOSURE OF CONTRIBUTION BY PERSONS LISTED IN SECTION 1 AND DISCLOSURE OF ANY SPOUSE OR CHILD UNDER THE AGE OF EIGHTEEN (18) OF A PERSON LISTED IN SECTION 1 WHO HAS MADE A CONTRIBUTION:

List the names of any person listed in Section 1 who has made a contribution and the name of any spouse or child under the age of eighteen (18) of any person listed in Section 1 who has made a contribution during the last five (5) years. Use the first box to identify the person: A = Officer, B = Director, C = Principal, D = Owner, E = Controller of 5% or more of the stock, F = Spouse, G= Child under 18, use the second box to identify relationship of spouse or child listed to person listed in Section 1.

- | | |
|------------------|-------------------|
| 1. [] [] _____ | 9. [] [] _____ |
| 2. [] [] _____ | 10. [] [] _____ |
| 3. [] [] _____ | 11. [] [] _____ |
| 4. [] [] _____ | 12. [] [] _____ |
| 5. [] [] _____ | 13. [] [] _____ |
| 6. [] [] _____ | 14. [] [] _____ |
| 7. [] [] _____ | 15. [] [] _____ |
| 8. [] [] _____ | 16. [] [] _____ |

SECTION 4. BIDDER/CONTRACTOR/VENDOR/PROPOSER CERTIFIED STATEMENT IN LIEU OF DISCLOSURE.

I hereby certify that, except as listed above, no officer, director, shareholder who owns or controls 5% or more of the business entity, principal, owner or his or her spouse or child under eighteen years of age has made a contribution, as defined in Section 15-32 D.R.M.C., or a contribution in kind, as defined at Section 15-32 D.R.M.C., to a candidate, as defined at Section 15-32 D.R.M.C., during the last five years.

Authorized Signature of Officer/Owner of Business Entity

SECTION 5. DISCLOSURE OF SUBCONTRACTORS, SUPPLIERS AND UNIONS. List the names of any unions with which your entity has a collective bargaining agreement and the names of any subcontractors or suppliers whose share of the amount to be paid by the City for this contract, purchase order or proposal will exceed One Hundred Thousand Dollars (\$100,000.00), identifying them in the box provided as follows: H = Subcontractor, I = Supplier, J = Union.

- | | |
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| 1. [] [] _____ | 9. [] [] _____ |
| 2. [] [] _____ | 10. [] [] _____ |
| 3. [] [] _____ | 11. [] [] _____ |
| 4. [] [] _____ | 12. [] [] _____ |
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| 6. [] [] _____ | 14. [] [] _____ |
| 7. [] [] _____ | 15. [] [] _____ |
| 8. [] [] _____ | 16. [] [] _____ |

SECTION 6. CERTIFIED STATEMENT OF PREVIOUS DISCLOSURE.

I hereby certify that the information required to be disclosed by Section 20-69(d) D.R.M.C. [i.e. the information contained in responses to Sections 1, 2, 3, 4, 5 and 6 of this Form] for _____ has previously been furnished

Name of Entity

to the City and County of Denver and is on file with the City Clerk and further certify that such information is current as of the date indicated below.

Authorized Signature of Officer/Owner of
Business Entity

Date

Attachment 2
DESIGN SERVICES AGREEMENT
between
THE CITY AND COUNTY OF DENVER
and

Contract No. CE _____

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Exhibit A – Scope of Work
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SAMPLE

DESIGN SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____ 2009, between the **CITY AND COUNTY OF DENVER** (the "City"), a municipal corporation of the State of Colorado, and _____ (the "Design Consultant"), a _____, whose address is _____.

RECITALS:

WHEREAS, the City desires to obtain professional architecture and engineering design services in support of the _____ (the "Project"); and

WHEREAS, the Design Consultant represents that its members include a duly licensed engineer/architect of the State of Colorado and that the Design Consultant has the present capacity and is experienced and qualified to perform professional architectural and engineering design services for the City in connection with the Project as specified in this Agreement; and

WHEREAS, Design Consultant is ready, willing and able to provide the services described herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties hereto mutually agree as follows:

SECTION 1 – ENGAGEMENT

1.01 Engagement. The City engages the Design Consultant with respect to the furnishing of professional design services for the Project as set forth in this Agreement. The Design Consultant accepts such engagement upon, subject to and in accordance with the terms, conditions and provisions of this Agreement.

1.02 Line of Authority for Contract Administration. The City's Manager of Public Works ("Manager") is the City's representative responsible for authorizing and approving the work performed under this Agreement. The Manager hereby designates the _____ as the Manager's authorized representative for the purpose of designating a Project Manager, for the purpose of issuing a written Notice to Proceed and for purposes of administering, coordinating and finally approving the work performed by the Design Consultant under this Agreement. The Project Manager shall be responsible for the day-to-day administration, coordination and approval of work performed by the Design Consultant, except for approvals which are specifically identified in this Agreement as requiring the Manager's approval. The Manager expressly reserves the right to designate another authorized representative to perform on the Manager's behalf by written notice to the Design Consultant.

1.03 Independent Contractor. The Design Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Design Consultant nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

1.04 Scope of Design Consultant's Authority. The Design Consultant shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. The Design Consultant is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. The Design Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

SECTION 2 – DESIGN CONSULTANT'S SERVICES

2.01 General. The Design Consultant shall provide professional design services for the Project in accordance with the terms and conditions of this Agreement. The Design Consultant's basic services shall consist of all of those services described in this Agreement and in Exhibit A.

2.02 Professional Responsibility.

- (a) All of the work performed by the Design Consultant under this Agreement shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform work of a nature similar to the Work described in this Agreement.
- (b) The Design Consultant agrees to strictly conform to and be bound by written standards, criteria, budgetary considerations and memoranda of policy furnished to it by the City and further

agrees to design each project in compliance with applicable laws, statutes, codes, ordinances, rules and regulations, and industry standards.

- (c) All professional services, plans and specifications and other work, or deliverables provided under this Agreement for the Project shall be adequate and sufficient for the proper construction of the Project and its intended purpose.
- (d) All drawings, specifications and other products shall be prepared so the Project, when constructed in accordance with such drawings and specifications, is in compliance with all applicable laws, statutes, codes, ordinances, and rules and regulations of the City, the State and the Federal government.
- (e) Any design changes required by changes in such applicable laws, statutes, codes, ordinances or rules and regulations of the City, the state or the federal government, which are enacted after the City's acceptance of Construction Documents, defined herein, will be outside the scope of the Design Consultant's basic services and basic fee, and will be compensated for approval as an additional service, subject to the additional services budget for that project.
- (f) The Design Consultant shall prepare the plans, specifications and other projects for the Project in a format that complies with all City requirements as well as all state and federal requirements for the Project. No funds will be paid to the Design Consultant for the preparation of contract documents in a form other than that considered usual and customary by the Department of Public Works. It shall be the responsibility of the Design Consultant to contact the reviewing agencies and determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though any responsible federal and state agencies have approved such documents.
- (g) The City reserves the right to proceed with the construction of the Project using either the City's standard general contractor bidding approach, on call contractors or using construction management techniques. The Design Consultant agrees to organize its Contract Documents for either construction technique and to coordinate the construction documents into selected bid packages, as appropriate. The City will notify the Design Consultant prior to the completion of the Design Development Design Phase which method will be used and the amount of work or the limits of construction to be included in the proposed bid package(s).
- (h) The reports, studies, drawings and specifications and other products prepared by the Design Consultant under this Agreement, when submitted by the Design Consultant to the Manager and the user agency for any identified phase of the Project, must represent a thorough study and competent solution for the project as per usual and customary professional standards and shall reflect all architectural and engineering skills applicable to that phase of the project.
- (i) The responsibilities and obligations of the Design Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant or subconsultant, or an employee of the City.
- (j) The Design Consultant shall provide all professional services required by the City in defending all claims against the City, which relate in any way to alleged default hereunder, errors or omissions of the Design Consultant or its subconsultants, without additional compensation.

2.03 Program and Budget.

- (a) The Design Consultant agrees to review the City's program and budget for the Project and further agrees, unless it has timely notified the City that the Project cannot be accomplished within such budget, to accomplish the Project within the intent of the program and established budget. Should the Design Consultant determine that The Project cannot be accomplished within the established budget, the Design Consultant shall immediately notify the City, in writing, so that the project scope or project budget can be reviewed and modified if necessary.
- (b) The term "Project Construction Cost" shall mean the estimated cost to the City of actually constructing the Project, but such cost shall not include any Design Consultant's or special consultant's fees or reimbursements or the cost of equipment installed by the City under separate contract, unless the Design Consultant is required by the City to prepare drawings and specifications for such equipment. The initial Project Construction Cost for the project to

which the Design Consultant shall be provided to the Design Consultant upon execution of this Agreement.

- (c) The Design Consultant agrees to design the Project within the estimated Project Construction Cost for the Project. Should all responsive bids or proposal received for the Project work provided for in the design exceed such cost, the Design Consultant agrees to redesign the Project at no additional cost to City and, in a manner acceptable to the City.

2.04 Coordination and Cooperation.

- (a) The Design Consultant agrees to perform under this Agreement in such a manner and at such times that the City or any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay.
- (b) Coordination with the City and other involved agencies shall be a continuing work item through all phases of each assigned project. Such coordination shall consist of regular progress and review meetings with the City, work sessions with the City's Public Works, and other user agencies or as otherwise directed by the City. Such coordination may also include field and office reviews of plans and documents as required during the development of the design for any specific project. The Design Consultant shall document all such conferences and distribute notes to the City.

2.05 Personnel Assignments.

- (a) The key professional personnel identified in **Exhibit B** will be assigned by the Design Consultant or its subconsultants to perform the services required under this Agreement, as appropriate.
- (b) The Design Consultant's services shall be diligently performed by the regular professional and technical staff of the Design Consultant. In the event the Design Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with City approval, by practicing professional consultants outside of the employ of the Design Consultant.
- (c) The Design Consultant agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to through outside subconsultants, professional design personnel and technicians in sufficient strength to meet the requirements of the City. Such personnel and technicians shall be of the classifications referenced in Exhibit A. The hourly rates specified therein include all costs except those specifically referenced as reimbursables in the appropriate hourly rate schedule.
- (d) Prior to designating an outside professional to perform subconsultant work, the Design Consultant shall submit the name of such subconsultant, together with a resume of training and experience in work of like character and magnitude of the project being contemplated, to the City and receive prior approval in writing.
- (e) It is the intent of the Parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that the Design Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.
- (f) If the Design Consultant or a subconsultant decides to replace any of its key professional personnel, the Design Consultant shall notify the Manager in writing of the desired change. No such changes shall be made until replacement personnel are recommended by the Design Consultant and approved in writing by the Manager, which approval shall not be unreasonably withheld.
- (g) If, during the term of this Agreement, the Manager determines that the performance of approved key personnel or a subconsultant is not acceptable, she shall notify the Design Consultant and give the Design Consultant the time which the Manager considers reasonable to correct such performance. Thereafter, she may require the Design Consultant to reassign or replace such key personnel. If the Manager notifies the Design Consultant that certain of its

key personnel or a subconsultant should be replaced, Design Consultant will use its best efforts to replace such key personnel or a subconsultant within ten (10) days from the date of the Manager's notice.

- (h) Neither the Design Consultant nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on a project to which they may be assigned, and the Design Consultant shall make written inquiry of all of its subconsultants concerning the existence of a potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.
- (i) Actions taken by the City under this Article shall not relieve the Design Consultant of its responsibility for contractual or professional deficiencies, errors or omissions.
- (j) The Design Consultant shall submit to the Manager a list of any additional key professional personnel who will perform work under this Agreement within thirty (30) days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks which may be assigned. Such additional personnel must be recommended by the Design Consultant and approved by the Manager before they are assigned to a specific project.
- (k) The Manager shall respond to the Design Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the Manager receives the list of changes. If the Manager or his designated representative does not respond within that time, the changes shall be deemed to be approved.

2.06 Basic Services – General.

- (a) These services shall be diligently performed by the regular professional and technical staff of the Design Consultant. In the event the Design Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with City approval, by practicing professional consultants outside of the employ of the Design Consultant.
- (b) Prior to designating an outside professional to perform work or services under this Agreement, the Design Consultant shall submit the name of such professional, together with a resume of training and experience in work of like character and magnitude as the project being contemplated, to the City and receive prior approval in writing.
- (c) All professional consultants and subconsultants must be retained for the life of the Project to the extent practicable, except that acceptable replacements may be substituted with prior written approval from the City as set out in Section 2.05.
- (d) The Design Consultant's basic services for the Project shall consist of the phases described below and shall include, but not be limited to, architectural, structural, mechanical, civil and electrical engineering services appropriate to each Project for each phase.
- (e) The Design Consultant shall obtain written authorization from the City before proceeding with each phase.
- (f) Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any phase beyond the latest phase authorized in writing by City.
- (g) The responsibilities and obligations of the Design Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant, subconsultant, or employee of the City.

2.07 Basic Services - Phase Specific. In the interest of tracking progress towards completion of all work items necessary to complete the Project specified herein, the required Basic Services tasks which must be performed on each Project have been separated into phases. As applicable for the Project, the Design Consultant shall satisfactorily complete all work necessary to complete each phase as specifically set out in **Exhibit A**.

2.08 Additional Services.

- (a) If the Design Consultant performs services in addition to its Basic Services, as a result of material changes in the Project or due to other circumstances beyond the Design Consultant's control, and if such services (1) are pre-approved in writing; (2) will not cause the total compensation payable to the Design Consultant to exceed the Maximum Contract Amount; and (3) are not occasioned by any neglect, breach or default of the Design Consultant, then the Design Consultant will be reimbursed its pre-approved cost for performance of such service(s).
- (b) Before providing any such services, the Design Consultant first shall file with the City, and secure the City's written approval of, a complete description of the proposed services including an estimate of the maximum cost of any and all such services, on the basis set out in Exhibits A and B, of rates per hour, per day, or other basis of cost. Such description shall also include a statement from the Design Consultant that the maximum cost of such services will not cause the total amount payable to the Design Consultant under this Agreement to exceed the maximum contract amount. In no event shall any form of authorization or pre-approval of additional services be deemed valid or binding upon either the City or the Design Consultant if the maximum cost of such services would cause the aggregate amount payable under this Agreement to exceed the maximum contract amount. Payment for additional services shall not, in any event, exceed the cost estimated by the Design Consultant and approved in writing by the City.
- (c) The cost of such additional service shall be deemed to be the lesser of the estimated maximum cost or:
 - 1. The actual time and cost of all design personnel including principal designer's time at the rates as set out in Exhibits A;
 - 2. The actual cost to the Design Consultant for other necessary outside services, such as structural, mechanical or electrical engineering performed by independent consultants; and
 - 3. The Design Consultant's actual reproduction cost for drawings.
- (d) The Design Consultant shall maintain an accurate and acceptable cost accounting as to all such additional expenses and shall make available to the City all records, canceled checks and other disbursement media to substantiate any and all requests for payment for additional services.
- (e) Payment to the Design Consultant for such additional services shall not, in any event, exceed the maximum additional services amount set forth in Section 3.

2.09 Surveying and Testing.

- (a) The Design Consultant shall obtain all necessary surveying, tests and reports to properly design and administer the construction of each project, including, but not limited to, soils and hazardous materials testing. The Design Consultant shall be responsible for the accuracy, adequacy and content of such tests, surveying and reports.
- (b) The Design Consultant and its appropriate subconsultant shall review all survey and test results reports and shall follow the recommendation of the soils engineer or other subconsultant unless, in the exercise of appropriate professional judgment, the Design Consultant or appropriate subconsultant discovers, or should in the exercise of professional judgment discover, factors indicating the report or results are not reliable.
- (c) If any such inadequacy or any inconsistency, based upon such exercise of professional judgment, is noted the Design Consultant and/or its appropriate subconsultant shall report such inconsistency or inadequacy promptly to the City and require such inadequacy or inconsistency to be addressed by the soils engineer, testing laboratory or land surveyor before any further use is put to the data.
- (d) The Design Consultant shall require all surveying, engineering and testing entities it selects to carry and maintain Comprehensive Auto Liability and Property Damage Insurance, General Commercial Liability and Property Damage Insurance and Professional Errors and Omissions coverage as required by the City's Office of Risk Management which will adequately protect the interests of the City and third parties from the acts and omissions of the testing entity.

- (e) The amount of surveying or testing, the cost, and the types of reports required must be approved by the Manager prior to the Design Consultant actually ordering any such work to be accomplished. Such approvals by the City shall be for purposes of compensation only and shall not relieve the Design Consultant of any responsibility for determining the scope and amount of surveying and testing necessary for the design of the project.
- (f) It is understood and agreed that this Agreement does not include the investigation, sampling, testing, planning, abatement design, and remediation management of asbestos or other hazardous waste material. Should the presence of asbestos or other hazardous waste material be known to exist on a specific project or if the Design Consultant shall observe the presence of asbestos or hazardous waste material on any project site during its performance of services under this Agreement, the Design Consultant shall notify the City in writing immediately.
- (g) Payment to the Design Consultant for such surveying, testing, and abatement shall not exceed the surveying and testing budget set forth in the project specific proposal for each project.

2.10 Compliance with M/WBE Requirements.

- (a) This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 to 28-36 and 28-52 to 28-90 D.R.M.C. (the "M/WBE Ordinance") and any Rules or Regulations promulgated pursuant thereto. The Design Consultant identified in its Proposal MBE and/or WBE firms with which it intends to subcontract under this Agreement, with a total participation level by such firms of [REDACTED]%. The project goal for M/WBE participation established for this Agreement by the Division of Small Business Opportunity (DSBO) is [REDACTED]%.
 - (1) It must establish and maintain records and submit regular reports, as required, which will allow the City to assess progress in achieving the M/WBE participation goal.
 - (2) If change orders or any other contract modifications are issued under the Agreement, the Design Consultant shall have a continuing obligation to immediately inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases discussed in § 28-73, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.
 - (3) If change orders or other contract modifications are issued under the contract, that include an increase in scope of work of this Agreement, whether by amendment, change order, force account or otherwise which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an M/WBE at the time of contract award, such change orders or contract modification shall be immediately submitted to DSBO for notification purposes. Those amendments, change orders, force accounts or other contract modifications that involve a changed scope of work that cannot be performed by existing project subconsultants or by the Design Consultant shall be subject to a goal for M/WBEs equal to the original goal on the contract which was included in the proposal. The Design Consultant shall satisfy such goal with respect to such changed scope of work by soliciting new M/WBEs in accordance with § 28-73, D.R.M.C., as applicable, or the Design Consultant must show each element of modified good faith set out in § 28-75(c) D.R.M.C. The Design Consultant shall supply to the director the documentation described
- (b) Under § 28-72 D.R.M.C., the Design Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with its originally achieved level of MBE and WBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting MBEs or WBEs performing on this Agreement through change order, contract amendment, force account, or as otherwise described in § 28-73 D.R.M.C. The Design Consultant acknowledges that:

in § 28-75-(c) D.R.M.C. with respect to the increased dollar value of the contract.

- (4) Failure to comply with these provisions may subject the Design Consultant to sanctions set forth in the M/WBE Ordinance. Should any questions arise regarding specific circumstances, the Design Consultant must consult the M/WBE Ordinance or contact the Project's designated DSBO representative at (720) 913-1999

SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING

The City shall compensate the Design Consultant for its service performed and expenses incurred under this Agreement as follows.

3.01 Fee for basic services. The City agrees to pay the Design Consultant, as full compensation for its basic services rendered hereunder, a fee not to exceed _____ (\$ _____), in accordance with the billing rates and project budget stated in Exhibit A. The amounts budgeted for phases may be increased or decreased, and the amounts allocated for services and expenses adjusted, upon written approval of the Manager or his designee, and subject to the Maximum Contract Amount stated in this Section 3.

3.02 Reimbursable Expenses. Except for those reimbursable expenses specifically identified in Exhibit A or approved in writing by the City as reasonably related to or necessary for the Design Consultant's services, all other expenses shall be included in the Design Consultant's fee and will not be reimbursed hereunder. The maximum amount to be paid for all reimbursable expenses under this Agreement is _____ (\$ _____) unless an additional amount is approved by the Manager or his designee in writing, subject to the Maximum Contract Amount stated herein. Unless this Agreement is amended in writing according to its terms to increase the Maximum Contract Amount, any increase in the maximum amount of reimbursable expenses will reduce the Design Consultant's maximum fee amount accordingly.

3.03. Additional Services. If pre-approved additional services are performed by the Design Consultant, the City agrees to pay the Design Consultant for such additional services in accordance with Section 2.08. The maximum amount to be paid by the City for all additional services under this contract is _____ (\$ _____).

3.04 Invoicing and Payment. The City will make monthly progress payments for all services performed under this Agreement based upon the Design Consultant's monthly invoices. Such invoices shall be in a form acceptable to the City and shall include detail of the time worked by the Design Consultant's own personnel, billings from subcontractors, and all other information necessary to assess the Design Consultant's progress. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought, and all other supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement. Final Payment to the Design Consultant shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by the Design Consultant. The City may, at the discretion of the Manager, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the Manager. However, no deductions shall be made from the Design Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractor(s).

3.05 Maximum Contract Amount.

- (a) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed _____ (\$ _____) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Design Consultant beyond that specifically described in Exhibit A. Any services performed beyond those set forth therein are performed at Design Consultant's risk and without authorization under the Agreement.
- (b) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash

reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

- (c) The Design Consultant understands and agrees that the provision of any services by the Design Consultant, which would cause the total amount payable to the Design Consultant to exceed the amount of previously appropriated and encumbered funds, is strictly prohibited. In the event the continuation of services by the Design Consultant would cause the amount payable to the Design Consultant to exceed such amounts, the Design Consultant agrees to give to the Project Manager at least two (2) weeks notice of the exhaustion of available funds. In the event additional funds are not made available within such two (2) week period, the Design Consultant agrees to stop providing services until such time as additional funds are appropriated and encumbered for the purposes of the this Agreement, and amounts which remain available for payment to the Design Consultant

SECTION 4 – TERM AND TERMINATION

4.01 Term. The term of this Agreement shall commence on execution of this Agreement and expire, unless sooner terminated, upon final completion of the Project.

4.02 Termination.

- (a) Nothing herein shall be construed as giving the Design Consultant the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the Manager.
- (b) The Manager may terminate this Agreement for cause at any time if the Design Consultant's services become unsatisfactory, in the sole discretion of the Manager. The City shall have the sole discretion to permit the Design Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.
- (c) In the event of a termination for cause, or in the event the Design Consultant becomes unable to serve under this Agreement, the City may take over work to be done under this Agreement and prosecute the work to the completion by contract or otherwise, and the Design Consultant shall be liable to City for all reasonable cost in excess of what the City would have paid the Design Consultant had there been no termination for cause.
- (d) The City may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) days' prior written notice to the Design Consultant, which notice shall state the date of cancellation and termination.
- (e) If the Design Consultant's services are terminated, postponed or revised, or if the Design Consultant shall be discharged before all the work and services contemplated have been completed, or if the project is, for any reason, stopped or discontinued, the Design Consultant shall be paid only for the portion of work or services which has been satisfactorily completed at the time of such dismissal, termination, cancellation, postponement, revision or stoppage.
- (f) All drawings, specifications, and other documents relating to the design or administration of work completed or partially completed shall be delivered by the Design Consultant to the City in the event of any dismissal, termination, cancellation, postponement, revision or stoppage.
- (g) In the event of any dismissal, termination, cancellation, postponement, revision or stoppage, the Design Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, delivery of drawings, specifications, and other documents referred to herein, and assisting the City during a transition to another Design Consultant, if applicable.

SECTION 5 – GENERAL PROVISIONS

5.01 City's Responsibilities.

- (a) The City shall provide available information regarding its requirements for each project, including related budgetary information, and shall cooperate fully with the Design Consultant at all times. However, the City does not guarantee the accuracy of any such information and

assumes no liability therefore. The Design Consultant shall notify City in writing of any information or requirements provided by the City which the Design Consultant believes to be inaccurate or inappropriate to the design or construction of the project.

- (b) If the City observes or otherwise becomes aware of any fault or defect in the project or non-conformance with Contract Documents, it shall give prompt notice thereof to Design Consultant.

5.02 Ownership of Documents.

- (a) The City shall have title and all intellectual and other property rights, in and to all phased and final Design documents, and all data used in the development of the same, including the results of any tests, surveys or inspections at the Project site, and all photographs, drawings, drafts, studies, estimates, reports, models, notes and any other materials or work products, whether in electronic or hard copy format, created by the Design Consultant pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the "Documents"), whether the Project for which the Documents were created is executed or not. The Design Consultant shall identify and disclose, as requested, all such Documents to the City.
- (b) To the extent permitted by the U.S. Copyright Act, 17 USC § 101 et seq., as the same may be amended from time to time, the Documents are a "work made for hire," and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a "work made for hire," the Design Consultant hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.
- (c) The Design Consultant shall provide (and cause its employees and subcontractors to provide) all assistance reasonably requested in securing for the City's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City's name, all rights to such Documents.
- (d) The Design Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder.
- (e) The Design Consultant shall be permitted to retain reproducible copies of all of the Documents for the information and reference, and the originals of all of the Documents, including all CAD disks, shall be delivered to the City promptly upon completion thereof, or if authorized by the City's Project Manager, upon termination or expiration of this Agreement.

5.03 Taxes and Licenses. The Design Consultant shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the work and services which it performs under this Agreement, and shall take out and keep current all required municipal, county, state or federal licenses required to perform its services under this Agreement. The Design Consultant shall furnish the Manager, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes. The Design Consultant shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and shall not allow any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations.

5.04 Design Consultant's Records. Records of the Design Consultant's direct personnel, consultant and reimbursable expenses pertaining to this Project and records of accounts between the City and the Design Consultant shall be kept on a generally recognized accounting basis. The Design Consultant agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers

and records of the Design Consultant, involving transactions related to this Agreement.

5.05 Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than the Design Consultant named herein. The Design Consultant understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting. Any attempt by the Design Consultant to assign or subcontract its rights hereunder without such prior written consent of the City shall, at the option of the City, automatically terminate this Agreement and all rights of the Design Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the City. In the event any such subcontracting shall occur, with the City's approval, such action shall not be construed to create any contractual relationship between the City and such subcontractor, and the Design Consultant named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

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

5.07 Insurance.

- (a) **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written 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." Additionally, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.
- (b) **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- (c) **Additional Insureds:** For Commercial General Liability and Auto Liability and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- (d) **Waiver of Subrogation:** For all coverages, Contractor's insurer shall waive subrogation rights against the City.
- (e) **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall

ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

- (f) **Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.
- (g) **Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- (h) **Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement
- (i) **Professional Liability:** Design Consultant shall maintain limits of \$1,000,000 for each claim, and \$2,000,000 aggregate limit for all claims.
- (j) **Additional Provisions:**
 - (1) For Commercial General Liability, the policies must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs in excess of policy limits;
 - (iii) A severability of interests, separation of insureds or cross liability provision; and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
 - (2) For claims-made coverage:
 - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
 - (3) If any aggregate limit is reduced by twenty five percent (25%) or more by paid or reserved claims, the Contractor shall notify the City within ten (10) days and reinstate aggregates required.

5.08 Defense & Indemnification.

- (a) Design Consultant hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Design Consultant or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
- (b) Design Consultant's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Design Consultant's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
- (c) Design Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on

behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

- (d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Design Consultant under the terms of this indemnification obligation. The Design Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- (e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

5.09 Colorado Governmental Immunity Act. The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

5.10 Contract Documents; Order of Precedence. This Agreement consists of Sections 1 through 5, which precede the signature page, and the following attachment, which is incorporated herein and made a part hereof by reference:

Exhibit A	Scope of Work
Exhibit B	Key Personnel
Exhibit C	ACORD Certificate of Insurance

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

Sections 1 through 5
Exhibit A
Exhibit B
Exhibit C

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

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

5.13. Conflict of Interest.

- (a) The parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described herein, and the Design Consultant further agrees not to hire or contract for services with any employee or officer of the City which would be in violation of the Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.
- (b) The Design Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Design Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Design Consultant by placing the Design Consultant's own interests, or the interests of any party with whom the Design Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Design Consultant written notice which describes the conflict. The Design Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

5.14 No Third Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Design Consultant, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the parties that any person other than the City or the Design Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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

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

5.17 Proprietary or Confidential Information.

- (a) City Information: The Design Consultant acknowledges and accepts that, in performance of its work under the terms of this Agreement, the Design Consultant may have access to Proprietary Data or confidential information which may be owned or controlled by the City and that the disclosure of such data or information may be damaging to the City or third parties. As such, the Design Consultant agrees that all information provided or otherwise disclosed by the City to the Design Consultant be held in confidence and used only in the performance of its obligations under this Agreement. The Design Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Design Consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall mean geographic materials or Geographic Information Systems ("GIS") data owned by the City and County of Denver including but not limited to maps, computer programs, aerial photography, methodologies, software, diagnostics and documents; or any other materials or information which may be designated or marked "Proprietary" or "Confidential" and provided to or made available to the Design Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.
- (b) Design Consultant's Information: The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise the Design Consultant of such request in order to give the Design Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Design Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Design Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Design Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

5.18 Use, Possession or Sale of Alcohol or Drugs. The Design Consultant, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Design Consultant from City facilities or participating in City operations.

5.19 No Employment of Illegal Aliens to Perform Work Under the Agreement.

- (a) The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the “Certification Statute”) and the Design Consultant is liable for any violations as provided in the Certification Statute.
- (b) The Design Consultant certifies that:
 - (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
 - (2) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the “Department Program”), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- (c) The Design Consultant also agrees and represents that:
 - (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program or the Department Program.
 - (4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.
 - (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three days. The Design Consultant will also then terminate such subconsultant or subcontractor if within three days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
 - (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

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

5.21 Waiver of C.R.S. 13-20-802, et seq. The Design Consultant specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes (also designated C.R.S. 13-20-802 *et seq.*) relating to design defects in the Project under this Agreement.

5.22 Survival of Certain Contract Provisions. The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement, (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Design Consultant’s obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.”

5.23 Advertising And Public Disclosure. The Design Consultant shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public

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

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

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

to the City:

Manager of Public Works
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

to the Design Consultant:

Attention: _____

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

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

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

5.28 Counterparts of this Agreement. This Agreement will be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the City and the Design Consultant have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF DENVER

ATTEST:

STEPHANIE Y. O'MALLEY, Clerk and
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
JOHN W. HICKENLOOPER,
Mayor

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:
DAVID R. FINE, Attorney
For the City and County of Denver

By: _____
Manager of Public Works

REGISTERED AND COUNTERSIGNED:

By: _____
Assistant City Attorney

By: _____
Manager of Finance
Contract Control No: CE _____

By: _____
DENNIS GALLAGHER, Auditor of the
City and County of Denver

"CITY"

By: _____

"DESIGN CONSULTANT"

EXHIBIT A

SCOPE OF WORK

[TO BE INSERTED BY PUBLIC WORKS]

EXHIBIT B

KEY PERSONNEL

[TO BE INSERTED BY PUBLIC WORKS]

EXHIBIT C

ACORD CERTIFICATE OF INSURANCE

[TO BE PROVIDED BY DESIGN CO]

Attachment 3

 DENVER THE MILE HIGH CITY	JOINT VENTURE ELIGIBILITY FORM	Office of Economic Development Division of Small Business Opportunity Compliance Unit 201 West Colfax Ave. Dept. 907 Denver, CO 80202 Phone: (720) 913-1999 Fax: (720) 913-1803
Joint Venture means an association of two (2) or more business enterprises to constitute a single business enterprise to perform a City construction or professional design and construction services contract for which purpose they combine their property, capital, efforts, skills and knowledge, and in which each joint venturer is responsible for a distinct, clearly defined portion of the work of the contract, performs a commercially useful function, and whose share in the capital contribution, control, management responsibilities, risks and profits of the joint venture are equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the joint venturers and their relationship and responsibility to the contract. The Division of Small Business Opportunity (DSBO) requires the following information be provided from participants of a prospective joint venture, to assist DSBO in evaluating the proposed joint venture. This Joint Venture Eligibility form and the Joint Venture Affidavit apply if SBEs, MBEs, WBEs or DBEs participate in this joint venture. Please return this form, the Joint Venture Affidavit and a copy of your Joint Venture Agreement to: Division of Small Business Opportunity, 201 West Colfax Avenue, Denver, CO 80202, at least five (5) days prior to bid opening or proposal. If you have questions regarding this process, please contact DSBO at 720-913-1999.		
Joint Venture Information		
Name:		Contact Person:
Address:		
City:	State:	Zip: Phone:
Joint Venture Participants		
Name:		Contact Person:
Address:		
City	State:	Zip: Phone:
% Ownership:	Certifying Entity:	Type Certification & Date: (S/M/W or DBE)
Type of Work for which Certification was granted:		
Name:		Contact Person:
Address:		
City	State:	Zip: Phone:
% Ownership:	Certifying Entity:	Type Certification & Date: (S/M/W or DBE)
Type of Work for which Certification was granted:		
General Information		
SBE/MBE/WBE/DBE Initial Capital Contributions: \$ %		
Future capital contributions (explain requirements) (attach additional sheets if necessary):		
Source of Funds for the SBE/MBE/WBE/DBE Capital Contributions:		
Describe the portion of the work or elements of the business controlled by the SBE/MBE/WBE or DBE (attach additional sheets if necessary):		
Describe the portion of the work or elements of the business controlled by non-SBE/MBE/WBE or DBE: (attach additional sheets if necessary)		

JOINT VENTURE ELIGIBILITY FORM		
General information		
Describe the SBE/MBE/WBE or DBE's involvement in the overall management of the joint venture (e.g., participation on a management committee or managing board voting rights, etc.) (attach additional sheets if necessary)		
Describe the SBE/MBE/WBE or DBE's share in the profits of the joint venture:		
Describe the SBE/MBE/WBE or DBE's share in the risks of the joint venture:		
Describe the roles and responsibilities of each joint venture participant with respect to managing the joint venture (use additional sheets if necessary):		
a. SBE/MBE/WBE or DBE joint venture participant:		
b. Non- SBE/MBE/WBE or DBE joint venture participant:		
Describe the roles and responsibilities of each joint venture participant with respect to operation of the joint venture (use additional sheets if necessary):		
a. SBE/MBE/WBE or DBE joint venture participant:		
b. Non- SBE/MBE/WBE or DBE joint venture participant:		
Which firm will be responsible for accounting functions relative to the joint venture's business?		
Explain what authority each party will have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties?		
Please provide information relating to the approximate <u>number</u> of management, administrative, support and non-management employees that will be required to operate the business and indicate whether they will be employees of the SMWBE, non-SMWBE or joint venture:		
	Non- SBE/MBE/WBE/DBE	SBE/MBE/WBE/DBE
Management		Joint Venture
Administrative		
Support		
Hourly Employees		

JOINT VENTURE ELIGIBILITY FORM			
General Information			
Please provide the name of the person who will be responsible for hiring employees for the joint venture.			
Who will they be employed by?			
Are any of the proposed joint venture employees currently employees of any of the joint venture partners?		Yes (?)	No (?)
If yes, please list the number and positions and indicate which firm currently employs the individual(s), (use additional sheets if necessary)			
Number of employees		Position	Employed By
Attached a copy of the proposed joint venture agreement, promissory note or loan agreement (if applicable), and any and all written agreements between the joint venture partners.			
List all other business relationships between the joint venture participants, including other joint venture agreements in which the parties are jointly involved.			
If there are any significant changes in or pertaining to this submittal, the joint venture members must immediately notify the Division of Small Business Opportunity.			

Attachment 4



Office of Economic Development
Division of Small Business Opportunity
Compliance Unit
201 West Colfax Avenue, Dept. 907

Joint Venture Affidavit

Denver, CO 80202
Phone: 720-913-1999
Fax: 720-913-1803

"The Undersigned swears that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the Undersigned covenant and agree to provide the City current, complete, and accurate information regarding actual joint venture work and the payment thereof and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records, and files of the joint venture, by authorized representatives of the City or Federal funding agency, if applicable. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements".

Name of Firm:

Print Name:

Title

Signature:

Date:

Notary Public

County of

State of

My Commission Expires:

Subscribed and sworn before me this

_____ day of _____, 20_____

Notary Signature:

Address: _____

Notary Seal

Name of Firm:

Print Name:

Title

Signature:

Date:

Notary Public

County of

State of

My Commission Expires:

Subscribed and sworn before me this

_____ day of _____, 20_____

Notary Signature:

Address: _____

Notary Seal

Name of Firm:

Print Name:

Title

Signature:

Date:

Notary Public

County of

State of

My Commission Expires:

Subscribed and sworn before me this

_____ day of _____, 20_____

Notary Signature:

Address: _____

Notary Seal

Attachment 5

	LETTER OF INTENT	Office of Economic Development Division of Small Business Opportunity Compliance Unit 201 West Colfax Avenue, Dept. 907 Denver, CO 80202 Phone: 720-913-1999 Fax: 720.913-1803
Project No.:	Project Name:	
A. The Following Section Is To Be Completed by the Bidder This Letter of Intent Must be Signed by the Bidder and M/WBE, SBE or DBE		
Name of Bidder:		Phone:
Contact Person:		Fax:
Address:	City	State: Zip:
B. The Following Section is To Be Completed by the M/WBE, SBE or DBE, at any Tier This Letter of Intent Must be Signed by the M/WBE, SBE or DBE and Bidder		
Name of Bidder:		Phone:
Contact Person:		Fax:
Address:	City	State: Zip:
This company is certified as a Minority Business Enterprise (MBE) (?) And/or Women Business Enterprise (WBE) (?)		
A Copy of the M/WBE, SBE or DBE Letter of Certification must be Attached		
Identify the scope of the work to be performed or supply item that will be provided by the M/WBE/SBE/DBE. <u>On unit price bids only, identify which bid line items this M/WBE/SBE/DBEs scope of work or supply corresponds to:</u>		
Subcontractor	Supplier	Broker
Bidder intends to utilize the aforementioned M/WBE, SBE or DBE for the Work/Supply described above. The cost of the work and percentage of the total subcontractor M/WBE, SBE or DBE bid/quote amount is \$ _____ = ____%.		
If this M/WBE, SBE or DBE is not a direct first tier subcontractor, supplier or broker to the bidder, please indicate the name of the subcontractor or supplier that will be utilizing the participation of this M/WBE, SBE or DBE:		
Bidder's Signature:		Date:
Title:		
M/WBE, SBE or DBE Firm; Signature:		Date:
Title:		
If the above named Bidder is not determined to be the successful bidder, this <u>Letter of Intent</u> shall be null and void.		

Attachment 6 **CONSULTANT TEAM MEMBERS**

PROPOSER: _____

(Consultant may copy this page or modify it to conform to the services being offered)

SERVICES PROVIDED	NAME OF FIRM	PERCENT PARTICIPATION	M/WBE ENTERPRISE**
ARCHITECTURAL	_____	_____ %	_____
STRUCTURAL ENGINEERING	_____	_____ %	_____
GEOTECHNICAL ENGINEERING	_____	_____ %	_____
CIVIL ENGINEERING	_____	_____ %	_____
ELECTRICAL ENGINEERING	_____	_____ %	_____
MECHANICAL ENGINEERING	_____	_____ %	_____
COST ESTIMATING	_____	_____ %	_____
SURVEY	_____	_____ %	_____
Other: _____	_____	_____ %	_____
Other: _____	_____	_____ %	_____
Other: _____	_____	_____ %	_____
Other: _____	_____	100 %	_____
Other: _____	_____	100 %	_____
Other: _____	_____	100 %	_____
Other: _____	_____	100 %	_____
Other: _____	_____	100 %	_____
		100 %	

** Indicate whether the firm is an MBE or WBE