

Request for Proposals

Contact

Bridget Tetteh Contract Administrator Denver Office of Economic Development 720-913-1556 Bridget.Tetteh@denvergov.org	
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Schedule of Events

RFP Issued: August 02, 2019
Preproposal Meeting: August 15, 2019 (Room 4.I.4 from 1:00 pm – 2:00 pm MDT)
Questions on RFP Guidelines Due: August 19, 2019 to DEDOHousingProposals@denvergov.org
Q & A Addendum to RFP Released: August 21, 2019
Proposal Due: August 30, 2019 at 4:00 p.m. MDT

Vendor offers to furnish to the City and County of Denver the materials, supplies, products or services requested in accordance with the specifications and subject to the Terms and Conditions described herein.

Company Name: _____

By: _____
(Print or Typed)

Signature: _____
Signature constitutes acceptance of all Terms and Conditions listed on this form and all documents attached

Email: _____

Phone: _____

Date: _____

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Overview

The City of Denver’s (the City) Community Planning and Development Department (CPD) and Denver Office of Economic Development (OED) are requesting proposals from qualified candidates to perform a series of tasks to support two related projects. The projects are focused on affordable housing.

The first project, to be led by CPD, will focus on creating a zoning incentive system for affordable housing in transit-rich areas. This project is anticipated to result in amendments to the Denver Zoning Code (DZC) and likely amendments to the Denver Revised Municipal Code (DRMC).

The second project, to be led by OED, will create affordable housing commitments exceeding the standard citywide linkage fee on large redevelopment sites that leverage City tools such as tax increment financing and metropolitan districts.

The City is seeking a multi-disciplinary team to assist the City in conducting best practice research, policy recommendations, stakeholder outreach, and economic feasibility.

Background

Plan Policy – Affordable Housing

In April of 2019, Blueprint Denver and Comprehensive Plan 2040 were adopted by City Council. The adoption of these two plans were the result of extensive community engagement to craft a long-range vision for the City of Denver while addressing key issues such as growth, mobility, housing, neighborhood character, and equity. In February of 2018, council adopted Housing an Inclusive Denver, the City’s five-year housing policy, strategy and investment plan.

Key policies and strategies from these plans include the following:

Denver Comprehensive Plan:

The recommendations and actions in Housing an Inclusive Denver support the vision elements and goals of Comprehensive Plan. Specifically,... “In 2040, Denver is an equitable, inclusive community with a high quality of life for all residents, regardless of income level, race, ethnicity, gender, ability or age” (p. 14)

Blueprint Denver:

Land Use and Built Form Housing Policy 9: “Promote coordinated development on large infill sites to ensure new development integrates with its surroundings and provides appropriate community benefits.” (p. 78)

Strategy 9.C: “Implement regulatory tools to set clear and predictable requirements for large redevelopments to provide benefits to the community such as affordable housing and open space.” (p. 78)

Housing an Inclusive Denver:

Recommendation 3: Develop more consistent standards for affordable housing in major redevelopment areas. The City and its partners should foster mixed-income and mixed-use communities by developing clear standards for the circumstances when an affordable housing plan will be created for a major redevelopment area and exploring the creative use of tax-increment financing. (p. 9)

Since Denver has a limited supply of undeveloped land that can be used to support affordable and mixed-income development, the City should develop clear standards for the circumstances when an affordable housing plan should be created for a major redevelopment site and provide clear guidance on the process to develop and execute the plan. (p. 51)

Key Action:

Develop clear standards for the circumstances when an affordable housing plan should be created for a major redevelopment site and provide clear guidance on the process to develop and execute the plan. (p. 52)

These plans can be reviewed online for reference here:

Comprehensive Plan 2040

(<https://www.denvergov.org/content/denvergov/en/denveright/comprehensive-plan.html>)

Blueprint Denver 2019 (<https://www.denvergov.org/content/denvergov/en/denveright/land-use-transportation.html>)

Housing an Inclusive Denver

(https://www.denvergov.org/content/dam/denvergov/Portals/690/Housing/HousingInclusiveDenver_FINAL_020918.pdf)

Denver Linkage Fee

In September of 2016, Council Bill 16-0625 was signed into City law. This law created a dedicated affordable housing fund to help create or preserve thousands of affordable homes for low- to

moderate-income families in Denver. This bill instated a linkage fee for all new construction including residential and commercial developments. The fee cannot be raised without a feasibility study; therefore, Housing an Inclusive Denver recommends in the 2019 action plan to explore a feasibility analysis of the existing fee.

Existing Denver Zoning Incentive Systems:

In 2017 and 2018, the City passed two major text amendments to the zoning code: the 38th and Blake Height Incentive Overlay and the Central Platte Valley zone district.

Key elements of the **38th and Blake** zoning system include:

- Policy guidance provided by the 38th and Blake Station Area Plan Amendment
- Text Amendment to the Denver Zoning Code and Denver Revised Municipal Code following the plan amendment process
- Implements the plan vision for greater building height in exchange for community benefits (i.e. affordable housing)
- Provides flexibility in zoning standards for projects that deliver a specified community or citywide benefit beyond what is required by the Denver Zoning Code and other regulations (Linkage Fee).
- Base Height (varies by location) – Standard linkage fee
- Incentive Height – Additional requirements apply to incentive stories
- Residential and residential mixed-use projects:
 - 1x citywide unit requirement
 - additional 4x citywide unit requirement (no option to pay fee, units must be built on site or within ¼ mile of the station)
- Non-Residential: additional 4x citywide fee or unit requirement (option to provide community-serving uses)
- Level of affordability: 80% AMI or less

Key elements of the **Central Platte Valley-Auraria** zoning incentive system include:

- The Downtown Area Plan Amendment set specific policy to leverage increased development potential to require on-site affordable housing
- The proposed zoning includes an incentive system to leverage increased development potential
 - 5 story ‘base height’ - Standard linkage fee
 - Affordable housing incentive system applies above 5 stories
- Residential mixed-use projects
 - Require affordable units (no option to pay fee, units must be built on site or in the area)
 - 1x citywide unit requirement on all stories
 - +6x citywide unit requirement on incentive stories
- Commercial mixed-use projects
 - 1x citywide linkage fee on all stories
 - additional 6x citywide linkage fee on incentive height
 - Or build units / community benefits agreement
- All large/phased projects

- Execute an affordable housing plan (AHP) to meet incentive requirements and provide a range of affordability
- Executed AHP required for 15% of the residential units in a in the Project to be income-restricted at a variety of affordability levels (including below 30% AMI) for a period of no less than forty (40) years

Legal Challenges

The state of Colorado does not allow for rent control, which places a constraint on Denver's ability to address affordable housing needs. The case of *Town of Telluride v. Lot Thirty-Four Venture* in 2000 found the affordable housing requirement in Telluride to be a form of rent control even for home-rule municipalities. Therefore, until state law changes, Denver and other municipalities will need to create regulations that do not result in a form of rent control.

Large Development Review (LDR) Process

The City of Denver recently adopted revisions to the Denver Zoning Code along with updated Rules and Regulations to create the LDR process to replace the General Development Plan (GDP) process. The LDR process is a plan implementation tool for large redevelopment sites.

The process will ensure large development sites reflect the community's adopted plan vision and meets the requirements for land use, infrastructure, affordable housing, open space, parks, design, and other community benefits addressing citywide goals related to sustainability. The revisions do this through codifying earlier, enhanced coordination across agencies and through calibrating the timing and type of planning and/or regulatory steps needed prior to site development to achieve adopted plan goals.

Specifically, the LRD process enables a flexible approach to public open space/placemaking requirements.

Project Purpose and Anticipated Timeline

The following includes a brief summary of each project's purpose and anticipated timeline.

Affordable Housing Zoning Incentive

This project is intended to implement some of the key housing recommendations of Comprehensive Plan 2040, Blueprint Denver, and Housing an Inclusive Denver. Specifically, this project will aim to create a citywide zoning incentive for the development of a range of affordable housing in transit-rich areas. The project is anticipated to begin in fall of 2019 and conclude with the adoption process in summer of 2021.

Large Redevelopment Areas

This project is intended to create affordable housing commitments on sites of a particular size and/or when using other tools such as TIF, Metro Districts, or other City incentives. This project is anticipated to begin in fall of 2019 and conclude in 2020.

Expectations of Consultant

The City of Denver seeks an experienced multi-disciplinary team to conduct the project as outlined in the Scope of Work. Interested firms or teams must demonstrate a knowledge and experience in plan

implementation, fiscal impact analysis, affordable housing, zoning incentive systems, and economic development.

Scope of Work This section of the RFP will form the basis of a contract covering the subject matter of this RFP. Exceptions or deviations to this proposal must not be added to the proposal pages, but must be on proposer's letterhead and accompany any proposal. Any exceptions to this documentation will be taken into consideration when evaluating submitted proposals. The City reserves the right to reject any or all of your proposed modifications. The City welcomes cost saving proposals which still satisfy all technical and business objectives.

Task 1 Scope of Work: Best Practice Research

This task would consist of a review of peer cities nationally and other front range communities to address the three different project focuses, including cities that have addressed more than one of the following topics through the same tools:

- Zoning incentives for affordable housing, especially in transit-rich areas
- Affordable housing commitments for large redevelopment areas

This review must focus on cities with similar economic pressures, housing prices, and parkland needs. To the extent possible, the research will identify the successes, challenges, and overall impact of peer cities' affordable housing incentives and policies. The proposed consultant will work with City staff to develop the following deliverables:

- A. Outline for the Best Practices Report
- B. Staff draft of the Best Practices Report
- C. Final Best Practices Report for the public
- D. PowerPoint presentation summarizing the Best Practices Report

The final report should be kept brief and accessible to a broad range of audiences.

Task 2 Scope of Work: Stakeholder Engagement

Through a separate contract, CPD is hiring professional services to assist in the facilitation of a stakeholder advisory committee, focus groups, and other engagement opportunities as identified throughout the process. The stakeholder advisory committee will be comprised of residents, developers, housing advocates, City Council members, and others identified at the forefront of the project, with a particular focus on development of the zoning incentive for affordable housing. This stakeholder advisory committee will meet throughout the process to provide feedback and recommendations throughout the duration of the project. In addition to the stakeholder advisory committee, the City will convene a series of focus groups to gain specific feedback on a topic of particular interest to a stakeholder group. The facilitator will be expected to use new and engaging methods to reach and gain meaningful input from under-represented populations.

The proposed consultant will respond to this proposed engagement approach and identify any deficiencies and areas in which the proposed consultant could support the stakeholder engagement portion of these projects.

Task 3 Scope of Work: Policy Recommendations Scope of Work:

Building upon the work of the best practice research, the consultant shall develop a series of policy recommendations for each project. Each policy recommendation shall identify benefits, drawbacks,

and additional considerations associated to the recommended policy approaches for each of the projects, including recommendations for how to coordinate/combine policies to advance all projects collectively. Additionally, the consultant should prioritize the recommended policies and identify the challenges and opportunities to implement each policy.

The consultant will work with City staff to develop the following deliverables:

- A. Policy recommendations outline
- B. Staff draft of the policy recommendations report
- C. Final policy recommendations report for the public
- D. PowerPoint presentation summarizing policy recommendations

This task may include multiple meetings with stakeholder groups presenting the recommendations. The consultant team should expect results of the feasibility analysis to inform the policy recommendations. This task will need to be carefully coordinated with the task below.

Task 4 Scope of Work: Feasibility Analysis:

The consultant shall work with city staff to identify development assumptions, specific sites, and different building types. Specifically, analysis shall test the financial feasibility to evaluate the impacts of each project's policy recommendations on different development types. A minimum of 15-20 different development scenarios throughout the City will be tested for both of the project focus areas, with the ability to analyze cumulative impact. This could potentially include analysis of alternative rates for the citywide linkage fee. The consultant should analyze different alternatives for all projects as a way to test different policy recommendations and to test feasibility and development impacts. Policy recommendations may need to be revisited based on the findings in the feasibility analysis.

The consultant will work with City staff develop the following deliverables:

- A. A live, editable model to test the impact of different incentives/requirements
- B. Different models may need to be produced for the zoning incentive project and redevelopment project given the different financial impacts and the differences between testing incentives versus requirements
- C. Create a summary of the model findings for each project focus

This will include meetings with stakeholder groups to inform the inputs into the model, as well as to present the findings of the analysis.

Fees and Expenses

The consultant team shall provide a detailed budget proposal for each task and deliverable with associated hourly rates for each member of the consultant team.

Submittal Information

The consultant team shall use the WizeHive application system (<https://app.wizehive.com/apps/ProfessionalConsultantServicesRFP>) to submit a copy of their proposal. The proposal shall at a minimum include:

- a) Title Page. Provide the name of your firm(s), address, telephone and name of contact person on a title page.
- b) Letter of Transmittal. Provide a complete statement regarding the understanding of the project and your interest in working with the City of Denver on this project. The transmittal letter shall be signed by a duly authorized officer or agent empowered with the right to bind the consultant submitting a proposal for consideration.
- c) Scope of Work. Provide a detailed scope of work for each of the tasks. Additionally, please note any additional tasks or deliverables that may not have been identified by City staff. Be sure to call these out as a separate line item in the proposed budget.
- d) Qualifications. Provide a summary of past experiences related to best practice research, policy development and evaluation, financial analysis, zoning matters and affordable housing. Include resume(s) of the project team. Clearly state what about your team make-up makes you the optimal provider for this RFP.
- e) References. Provide names, emails and telephone numbers of three references that we may contact to verify performance on similar types of projects.
- f) Cost Estimate. Provide a detailed budget proposal for each task and deliverable with associated hourly rates for each member of the consultant team.
- g) Anticipated participation on the part of the City for each of these tasks. Please identify your expectations of the City regarding your proposal.
- h) IRS Form W-9. Provide a current IRS Form W-9 available and attached to their application. Obtain the form and instructions here: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.
- i) Certificate of Good Standing from Secretary of State. Consultants must be registered with the Colorado Secretary of State and have an active Certificate of Good Standing attached to their application. See <http://www.sos.state.co.us/pubs/business/businessHome.html> for more information.
- j) Diversity and Inclusiveness in City Solicitations Information Request Form. Using the form, entitled “Diversity and Inclusiveness in City Solicitations Information Request Form,” please state whether you have a diversity and inclusiveness program for employment and retention, procurement and supply chain activities, or customer service and provide the additional information on the requested form. The information provided on this form will provide an opportunity for City contractors/consultants to describe their own diversity and inclusiveness practices. Contractors/consultants are not expected to conduct intrusive examinations of its employees, managers, or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the contractor/consultant’s current practices, if any. Diversity and Inclusiveness information provided by City contractors/consultants in response to City solicitations for services or goods will be collated, analyzed, and made available in reports consistent with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from contractors/consultants will be in such reports. A link will be provided in the application for Applicants to complete an e-form.
- k) Additional Information. Please submit any additional information that may assist in our evaluation of qualifications.

Evaluation Process

Proposals will be scored and ranked utilizing the *WizeHive* Evaluation Tool based upon the information contained in the application itself and uploaded attachments.

Evaluation Team

All submissions will be reviewed by an Evaluation Team comprised of OED and CPD staff. All data and information from the proposer must be submitted through the online RFP submission and documents uploaded before submission. No additional information, documents or inquiries pertaining to the submission, including email and phone calls, will be considered during the selection process.

Evaluation Criteria

Submissions should be comprehensive, accurate, and concise presentations of the requested information. To facilitate the review of applications, all proposers must follow the schedule, format, and content requirements as detailed herein in order to be considered responsive to this RFP.

The criteria to be used for the proposal evaluation include but are not limited to:

- (a) Cost Effectiveness
- (b) Demonstrated understanding of the project
- (c) Experience of the firms(s) in comparable projects
- (d) Qualifications and experience of the key individuals who will be responsible for undertaking the majority of the work
- (e) References
- (f) Response to the City's proposed Sample Contract provisions

No weighting or relative importance of criteria is intended or implied by this list.

Decisions

Based upon the information provided by the proposers, the Evaluation Team will evaluate qualifications. The evaluations will be ranked according to scores in *WizeHive* and forwarded to Senior Management.

The City reserves the right to postpone or cancel this RFP, if it deems it to be in the best interests of the City to do so. City reserves the right to waive any technical or formal errors or omissions, and to reject any and all applications, or to award contracts, either in part or in whole, if deemed to be in the best interests of the City. The City shall not be liable for any costs incurred by vendor in the preparation of proposals or for any work performed in connection therein.

Successful proposers shall be in complete compliance with each of the specifications, terms and conditions of the RFP. The City shall not be liable for any costs incurred in the preparation of applications or for any work performed in connection therein.

Gratuities and Kickbacks

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee (within six months of termination from City employment), or for any employee or former employee (within six months of termination from City employment) to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a

purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime vendor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

In the event that any gratuities or kickbacks are offered or tendered to any City and County of Denver employee, the proposal shall be disqualified and shall not be reinstated.

Non-Collusive Applicant Certification

By the submission of a proposal, the Applicant certifies that:

- A. The proposal has been arrived at by the applicant independently and has been submitted without collusion with any other applicant.
- B. The contents of the proposal have not been communicated by the applicant, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the applicant or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the proposal.
- C. No applicants shall submit more than one proposal for this purchase.

Disclosure of Contents of Proposals

All proposals become a matter of public record and shall be regarded as Public Records, with the exception of those specific elements in each proposal which are designated by the proposer as Business or Trade Secrets and plainly marked “Trade Secrets”, “Confidential”, “Proprietary”, or “Trade Secret”. Items so marked shall not be disclosed unless disclosure is otherwise required under the Open Records Act. If such items are requested under the Open Records Act, the City will use reasonable efforts to notify the proposer, and it will be the responsibility of the proposer to seek a court order protecting the records, and to defend, indemnify, and hold harmless the City from any claim or action related to the City’s non-disclosure of such information.

Sample Contract

This section will include your response to our proposed terms and conditions included in this section and will form the basis for the preparation of a contract covering the subject matter of this RFP.

You will respond in your proposal either that all terms and conditions are acceptable or that some are acceptable and some are not. Underline or highlight those words, phrases, sentences, paragraphs, etc. that are not satisfactory and note any exceptions by referencing the appropriate article number, a brief explanation and alternative language, if any, and submit the same on a separate typewritten sheet. Any exceptions will be taken into consideration when evaluating your proposal.

See additional document marked “Sample Contract” for all terms and conditions.

SAMPLE CONTRACT

The sample contract is contained in the pages immediately following this page.

These pages are not included in the page numbering of this RFP.

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **[fill in]**, (the “Consultant”), jointly “the parties”.

The parties agree as follows:

1. COORDINATION AND LIAISON: The Consultant shall fully coordinate all services under the Agreement with the Executive Directors of Community Planning and Development, and the Office of Economic Development, (“Executive Director”) or, the Executive Directors’ Designees.

2. SERVICES TO BE PERFORMED:

a. As the Executive Directors direct, the Consultant shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A, the Scope of Work**, to the City’s satisfaction.

b. The Consultant is ready, willing, and able to provide the services required by this Agreement.

c. The Consultant shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. TERM: The Agreement will commence on _____ and will expire on _____ (the “Term”). Subject to the Executive Directors’ prior written authorization, the Consultant shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Directors.

4. COMPENSATION AND PAYMENT:

a. Budget. The City shall pay and the Consultant shall accept as the sole compensation for services rendered and costs incurred under the Agreement the line item amounts set forth in the budget contained in **Exhibit B**. Amounts billed may not exceed the budget set forth in Exhibit B.

b. Reimbursable Expenses: There are no reimbursable expenses allowed under the Agreement.

c. **Invoicing:** Consultant shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all 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.

d. **Maximum Contract Amount:**

(1) 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 Consultant beyond that specifically described in **Exhibit A**. Any services performed beyond those in Exhibit A are performed at Consultant's risk and without authorization under the Agreement.

(2) 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 this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. **STATUS OF CONSULTANT:** The Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Consultant nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. **TERMINATION:**

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon ten (10) days prior written notice to the Consultant. However, nothing gives the Consultant the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Directors.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Consultant or any of its officers or employees are convicted, plead *nolo*

contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Consultant's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement, with or without cause, the Consultant shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Consultant's possession, custody, or control by whatever method the City deems expedient. The Consultant shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Consultant shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

7. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Consultant, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Consultant. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

9. **INSURANCE:**

a. **General Conditions:** Consultant agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Consultant shall keep the required insurance coverage in

force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Consultant. Consultant shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant. The Consultant shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. Proof of Insurance: Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Consultant certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Consultant’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds:** For Commercial General Liability and Auto Liability Consultant and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all coverages required under this Agreement, Consultant's insurer shall waive subrogation rights against the City.

e. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Consultant. Consultant shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Consultant agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

f. **Workers' Compensation/Employer's Liability Insurance:** Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Consultant expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Consultant's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Consultant executes this Agreement.

g. **Commercial General Liability:** Consultant shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

h. **Business Automobile Liability:** Consultant shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

i. **Additional Provisions:**

(i) For Commercial General Liability, the policy must provide the following:

- (a) That this Agreement is an Insured Contract under the policy;
- (b) Defense costs are outside the limits of liability;
- (c) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and
- (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(ii) For claims-made coverage:

(a) 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.

(b) Consultant shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Consultant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

10. DEFENSE AND INDEMNIFICATION

a. Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or 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 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. 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. 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. Consultant shall defend any and all Claims which may be brought or threatened against City and shall 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 will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant is responsible to 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.

11. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Consultant shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

12. ASSIGNMENT; SUBCONTRACTING: The Consultant shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Directors' prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Executive Directors have sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Consultant shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

13. **INUREMENT**: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

14. **NO THIRD PARTY BENEFICIARY**: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Consultant receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

15. **NO AUTHORITY TO BIND CITY TO CONTRACTS**: The Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

16. **SEVERABILITY**: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

17. **CONFLICT OF INTEREST**:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Consultant shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The Consultant shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interests of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Consultant written notice describing the conflict.

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

Executive Director of Community Planning and Development, or Designee
201 West Colfax Avenue, Department 205
Denver, Colorado 80202

Executive Director of Office of Economic Development, or Designee
101 West Colfax Avenue, Department 850
Denver, Colorado 80202

With a copy of any such notice to:

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

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

19. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The 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 the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The 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.

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a 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 (3) days. The Consultant shall also terminate such subconsultant or subcontractor if within three (3) 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., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so

terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.

20. DISPUTES: All disputes between the City and Consultant arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the applicable Executive Director as defined in this Agreement.

21. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

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

23. COMPLIANCE WITH ALL LAWS: Consultant shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

24. LEGAL AUTHORITY: Consultant represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Consultant represents and warrants that he has been fully authorized by Consultant to execute

the Agreement on behalf of Consultant and to validly and legally bind Consultant to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Consultant or the person signing the Agreement to enter into the Agreement.

25. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

26. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. INTELLECTUAL PROPERTY RIGHTS: The City and Consultant intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Consultant and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Consultant shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Consultant (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

28. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Consultant’s obligations to provide insurance and to indemnify the City will 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.

29. ADVERTISING AND PUBLIC DISCLOSURE: The Consultant shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Consultant's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Consultant shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

a. CONFIDENTIAL INFORMATION: Consultant acknowledges and accepts that, in performance of all work under the terms of this Agreement, Consultant may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Consultant agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Consultant shall be held in confidence and used only in the performance of its obligations under this Agreement. Consultant shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

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

31. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral

representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

32. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Consultant shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A 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 contract personnel being barred from City facilities and from participating in City operations.

33. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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