Firms are hereby instructed that the RFQ documents are modified, corrected, supplemented and/or superseded for the above-mentioned project as hereinafter described:

**ATTACHMENTS**

- Sample Agreement
- Rate Sheets

**QUESTIONS/ANSWERS**

Q1. Can we include full resumes as part of the Appendix, and will it count towards the total page limit?

A1. Any pages that are not the cover sheet, divider or tab sheets, Sample Agreement comments, or any other required forms will contribute to the sheet count. Since resumes are not part of the required forms, resumes will count towards the total page limit.

Q2. Can we have clarification on the allowed 11x17 pages? – if we use an 11x17, will it count as one or two pages?

A2. 11”x17” sized paper will count as one page. A maximum of two 11”x17” sheets are allowed.

Q3. Clarification on scope requirements as listed in Tab 2, bullet A – exactly which scope requirements?

A3. This bullet states: “Describe the qualifications and experience of the firm as indicated by prior successful completion of similar projects along with client reference for each listed scope requirement.” This bullet point is intended to state, “Describe the qualifications and experience of the firm as indicated by prior successful completion of similar projects along with client reference for each listed key project goal.”

Q4. For attachment 2, it appears that the wrong footer is on those pages. Is it okay for us to still use the forms that were in the RFP?

A4. The corrected rate sheets are attached.
ON-CALL PROFESSIONAL SERVICES AGREEMENT

between

THE CITY AND COUNTY OF DENVER

and

Contract Number: _________________

THIS AGREEMENT (“Agreement”) is made and entered into between the CITY AND COUNTY OF DENVER (the “City”), a home rule and municipal corporation of the State of Colorado, and ______________________, a _______________________ (the “Consultant”), with a principal place of business at __________________________________.

RECITALS

1. The City, through its Department of Transportation and Infrastructure (“DOTI”), desires to secure certain readily available planning, design, and other professional services to support the City’s program to provide a more multimodal vision for the North Central Community Transport Network intended to increase transportation equity, improve safety, and prioritize top projects for design and construction within the Globeville and Elyria-Swansea neighborhoods on an “as needed” and “on-call” basis (the “Program”). The area to be influenced by the Program is depicted in a general way on Attachment 1 attached hereto (the “Program Site”).

2. The Consultant represents that it has the present capacity, experience, and qualifications to provide program management services including strategic planning, program management, professional design services, program and project controls, and management, project coordination, technical support and communications for the Program.

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 hereby engages the Consultant with respect to the performance and delivery of the Work and professional services set forth and defined in Exhibit A attached hereto on an On-Call basis, as set forth in this Agreement (the “Services” or the “Scope of Services”). The Consultant accepts such engagement upon, subject to, and in accordance with the terms, conditions, and provisions of this Agreement.

1.02 Line of Authority for Contract Administration. The City’s Executive Director of the DOTI (“Executive Director”) is the City’s representative responsible for authorizing and approving
the Work performed under this Agreement. The Executive Director hereby designates _______ (referred to herein as the “Program Manager”), as the Executive Director’s authorized representative for the purpose of issuing a written Notice to Proceed and for purposes of administering, coordinating, and finally approving the Work performed by the Consultant under this Agreement. The Executive Director expressly reserves the right to designate another authorized representative to perform on the Executive Director’s behalf as the “Program Manager” hereunder by written notice to the Consultant.

1.03 Independent Contractor. 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, subconsultants, or subcontractors are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

1.04 Scope of Consultant’s Authority. The Consultant shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. The Consultant is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. The Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City’s Charter and the Denver Revised Municipal Code (“DRMC”).

SECTION 2 – CONSULTANT’S SERVICES

2.01 General. The Consultant shall provide professional Services as assigned by the City from time-to-time by written Task Order, on an as-needed basis, in accordance with the terms and conditions of this Agreement. The Consultant’s Services shall consist of all Services described in this Agreement and in Exhibit A. Tasks may be added or removed at the written direction of the Program Manager.

2.02 Professional Responsibility and Task Requirements.

(a) All Work performed by the Consultant shall be performed in accordance with the standards of care, skill, training, diligence, and judgment provided by competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

(b) The Consultant agrees to strictly conform to and be bound by written standards, criteria, budgetary considerations and memoranda of policy furnished to it by the City and shall comply with all applicable laws, statues, codes, ordinances, rules and regulations, of the City, state and federal government as well as any applicable industry standards.

(c) All professional Services or deliverables provided under this Agreement shall be adequate and sufficient for the project or task and its intended purpose, as reflected in the applicable Task Order.

(d) The Consultant shall prepare all documents as requested in a format that complies with all City, state and federal requirements. It shall be the Consultant’s responsibility to contact the reviewing agencies to 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.
(e) The reports, studies, and other products prepared by the Consultant under this Agreement, when submitted by the Consultant to the Executive Director and the user agency for any identified phase of a task, must represent a thorough study and competent solution for the task as per usual and customary professional standards and shall reflect all skills applicable to the assigned task.

(f) The responsibilities and obligations of the Consultant under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, consultant or subconsultant, or an employee of the City.

(g) The Consultant shall take direction only from the Program Manager.

(h) The 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 Consultant or its subconsultants, without additional compensation.

2.03 Program and Budget. Each task proposal will include a maximum fee. The Consultant agrees to complete the task within the limits of the approved Task Order. Should all task Work exceed such cost, the Consultant agrees to complete the task at no additional cost to City and, in a manner acceptable to the City.

2.04 Coordination and Cooperation.

(a) The 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 task. Such coordination shall consist of regular progress and review meetings with the City, work sessions with the City Program Manager, or as otherwise directed by the City. If requested, the Consultant shall document conferences and distribute notes to the City.

2.05 Personnel Assignments.

(a) The key professional personnel identified in Exhibit C will be assigned by the Consultant or its subconsultants to perform the Services required under this Agreement, as appropriate.

(b) The Consultant’s Services shall be diligently performed by the regular professional and technical staff of the Consultant. In the event the 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 Consultant.

(c) The Consultant agrees, at all times during the term of this Agreement, to maintain on its payroll or to have access to through subconsultants, personnel in sufficient strength to meet the requirements of the City. Such personnel shall be of the classifications referenced in Exhibit B. The hourly rates specified in Exhibit B 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 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 task being contemplated, to the City and receive prior approval in writing.

(e) It is the intent of the parties hereto that all key professional personnel be engaged to perform their specialty for all such Services required by this Agreement and that the Consultant's 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 Consultant or a subconsultant decides to replace any of its key professional personnel, the Consultant shall notify the Executive Director in writing of the desired change. No such changes shall be made until replacement personnel are recommended by the Consultant and approved in writing by the Executive Director, which approval shall not be unreasonably withheld.

(g) If, during the term of this Agreement, the Executive Director determines that the performance of approved key personnel or a subconsultant is not acceptable, the Executive Director shall notify the Consultant and give the Consultant the time which the Executive Director considers reasonable to correct such performance. Thereafter, the Executive Director may require the Consultant to reassign or replace such key personnel. If the Executive Director notifies the Consultant that certain of its key personnel or a subconsultant should be replaced, Consultant will use its best efforts to propose replacements for such key personnel or a subconsultant within ten (10) days from the date of the Executive Director's notice.

(h) Neither the Consultant nor any subconsultant shall have other interests which conflict with the interests of the City, and the Consultant shall make written inquiry of all subconsultants and subcontractors concerning the existence of a potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for a particular subconsultant.

(i) Actions taken by the City under this Section 2.05 shall not relieve the Consultant of its responsibility for contractual or professional deficiencies, errors or omissions.

(j) The Consultant shall submit to the Executive Director a list of any additional key professional personnel who will perform Work under this Agreement within thirty (30) days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks which may be assigned. Such additional personnel must be recommended by the Consultant and approved by the Executive Director before they are assigned to a specific task.

(k) The Executive Director shall respond to the Consultant's written notice regarding replacement of key professional personnel within fifteen (15) days after the Executive Director receives the list of changes. If the Executive Director or his designated representative does not respond within that time, the changes shall be deemed to be approved.

2.06 Basic Services.

(a) The Consultant shall, under the general direction of and at the written request of the Program Manager, furnish the Services as set forth in this Agreement. Subject to an express, agreed upon limitation of such duties set forth in any approved Task Order
for the particular task assigned to the Consultant under this Agreement, the Consultant agrees to perform all of the Services and duties set forth in this Agreement in regard to each task to which it is assigned, and its proposal is approved.

(b) When directed by the Program Manager to perform a particular task, the Consultant shall prepare a task specific proposal in accordance with the scope or description of Work for that task. A separate task specific proposal shall be prepared for each task for which the Consultant’s Services are required and shall set forth, at a minimum all the following:

1. The maximum fee for the Consultant’s proposed Services.
2. Itemized fee breakdown.
3. The additional services budget, if any, for the task.
4. Any reimbursable expenses approved pursuant to Section 3.02.
5. A detailed description of the task and Scope of Work (the “Work”).
6. A list of deliverables for the task.
7. An agreed upon schedule for deliverables and completion of the Work.

(e) Upon approval by the Program Manager of a Task Order, the approval and appropriation of funding for such Task Order, and the issuance of a written Notice to Proceed (“NTP”), the Consultant shall proceed to perform required Work.

(d) The assigned Work shall be performed in conformance with an approved Task Order.

(e) The Consultant's basic Services for each task to which it is assigned may consist of any of the Services described in Exhibit A or similar professional Services related to Program and the Work described in this Agreement.

(f) An NTP may pertain to all or portions of each Task Order. The Consultant shall obtain an NTP from the City before proceeding with any Task Order.

(g) Nothing in this Agreement shall be construed as placing any obligation on City to proceed with any Work beyond Work authorized by an executed NTP. Further, nothing in this Agreement shall be construed as guaranteeing the Consultant any minimum amount of Work or number of tasks assigned under this Agreement.

SECTION 3 – COMPENSATION, PAYMENT, AND FUNDING

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

3.01 Basic Services. The City agrees to pay the Consultant, as compensation for any Services rendered for a particular task, either the maximum fee, to be set forth in each approved Task Order, or an amount based on the Consultant's periodic invoices, whichever is less.

3.02 Reimbursable Expenses. Unless expressly authorized by the City as part of any approved Task Order or specified in Exhibit B, the City will not compensate the Consultant for expenses such as postage, travel, mileage, telephone, reproduction and messenger service costs incurred in connection with Work performed under this Agreement. Such costs are, in all such instances,
3.03 Additional Services. The Consultant will be compensated for additional services the City pre-approves in writing in a Task Order, subject to the terms and conditions set forth herein and the additional services budget limits set forth in a Task Order.

3.04 Invoices. The Consultant shall invoice and be paid monthly for the Work performed on each assigned Task Order. Such invoices shall reflect the Consultant's actual hours, sub-consultant costs and reimbursable costs, and shall be based on the hourly rates or other rates for Services contained in Exhibit B. The rates contained in Exhibit B can be modified only by a written amendatory or other agreement executed in the same manner as this Agreement. The rates contained in Exhibit B can be modified only by a written amendatory or other agreement executed in the same manner as this Agreement. The Consultant shall maintain contemporaneous hourly records of the actual hours worked by its personnel and subconsultants, records of all allowable reimbursable expenses, and records of expendable supplies and services as necessary to support any audits by the City and shall bill the City monthly for fees and costs accrued during the preceding month. The Consultant's invoice shall be separated by Task Order. Upon submission of such invoices to the City Program Manager, and approval by the City, payment shall issue. Final payment to the Consultant, for each assigned Task Order, shall not be made until after all Task Order Work is performed and all deliverables are delivered. Payments will be made in accordance with the City’s prompt payment ordinance.

3.05 Maximum Contract Amount; Funding. It is understood and agreed by the parties hereto that payment or reimbursement of all kinds to the Consultant, for all Work performed under this Agreement, shall not exceed a maximum of _____________ ($___________). In no event shall the maximum payment to the Consultant, for all Work and Services performed throughout the entire term of this Agreement exceed the contract maximum amount set forth above.

3.06 Appropriation and Funding.

(a) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(b) As of the date of this Agreement, no funds have been appropriated for this Agreement. Instead, it is the City's intent to appropriate the funds necessary to compensate the Consultant for the Work it performs on any assigned task, at the time it executes each Task Order. The applicable Manager or his designee, upon reasonable written request, will advise the Consultant in writing of the total amount of appropriated and encumbered funds which are or remain available for payment for all Work by the Consultant on an assigned Task Order.

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

SECTION 4 – TERM AND TERMINATION

4.01 Term. The term of this Agreement shall commence on ______________, and shall expire on ______________ [Four (4) Years], unless sooner terminated or extended by written amendment. The Consultant shall complete any Work authorized by Task Order before the expiration of this Agreement and the term will extend until the Work is completed or earlier terminated by the Executive Director. Notwithstanding the foregoing, the City, at its sole option may renew this Agreement for up to two (2) additional one (1) year terms by written amendatory agreement executed in the same manner as this Agreement.

4.02 Termination.

(a) Nothing herein shall be construed as giving the Consultant the right to perform the Services contemplated under this Agreement beyond the time when its Services become unsatisfactory to the Executive Director.

(b) The Executive Director may terminate this Agreement for cause at any time if the Consultant's Services become unsatisfactory. The City shall have the sole discretion to permit the Consultant to remedy the cause of a contemplated termination for cause without waiving the City's right to terminate the Agreement.

(c) In the event of a termination for cause, or in the event the Consultant becomes unable to serve under this Agreement, the City may take over Work to be done under this Agreement and prosecute the Work to the completion by contract or otherwise, and the Consultant shall be liable to City for all reasonable cost in excess of what the City would have paid the 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 Consultant, which notice shall state the date of cancellation and termination.

(e) If the Consultant's Services are terminated, postponed or revised (“revised” or “revision” as used herein meaning no additional Work to be performed for such task(s) or portions thereof), or if the 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 Consultant shall be paid only for the portion of Work or Services which has been satisfactorily completed at the time of such dismissal, termination, cancellation, postponement, revision or stoppage.

(f) All documents relating to the administration of Work completed or partially completed shall be delivered by the Consultant to the City in the event of any
dismissal, termination, cancellation, postponement, revision or stoppage.

(g) In the event of any dismissal, termination, cancellation, postponement, revision or stoppage, the Consultant shall cooperate in all respects with the City. Such cooperation shall include, but not be limited and other documents referred to herein and assisting the City during a transition to another Consultant, if applicable.

SECTION 5 - GENERAL PROVISIONS

5.01 City’s Responsibilities.

(a) The City shall provide information regarding its requirements for each assigned task. However, the City does not guarantee the accuracy or completeness of any such information and assumes no liability therefore. The Consultant shall notify the City in writing of any information or requirements provided by the City which the Consultant believes to be inaccurate.

(b) If the City observes or otherwise becomes aware of any unsatisfactory or non-conforming Services, it will notify the Consultant. Consultant will diligently correct deficiencies and resubmit impacted deliverables.

5.02 Ownership of Documents.

(a) The City shall have title and all intellectual and other property rights, in and to all documents, and all data used in the development of the same, whether in electronic or hard copy format, created by the Consultant pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the "Documents"), whether the project for which the Documents were created is executed or not. The Consultant shall identify and disclose, as requested, all such Documents to the City.

(b) To the extent permitted by the U.S. Copyright Act, 17 USC § 101 et seq., as the same may be amended from time to time, the Documents are a “work made for hire,” and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a “work made for hire,” the Consultant hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.

(c) The Consultant shall provide (and cause its employees and subcontractors to provide) all assistance reasonably requested in securing for the City’s benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City’s name, all rights to such Documents.

(d) The Consultant agrees to allow the City to review any of the procedures used in performing the Work and Services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of
any of the Services performed hereunder.

(e) The Consultant shall be permitted to retain reproducible copies of all the Documents for their information and reference, and the originals of all of the Documents shall be delivered to the City promptly upon completion thereof, or if authorized by the City Manager, upon termination or expiration of this Agreement.

(f) City acknowledges and agrees that in the performance of the Work, Consultant may utilize its proprietary data, concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software, works of authorship, software and hardware architecture, databases, tools, other background technologies and standards of judgment that Consultant developed itself or licensed from third parties prior to the Effective Date (the “Pre-Existing Technology”). Subject to the terms and conditions of this Agreement, Consultant hereby grants to City a non-exclusive, non-transferable, royalty-free license to utilize the Pre-Existing Technology for the purpose of the City’s Program. City shall not, and shall not allow any third party to: (i) modify or otherwise create derivative works of the Pre-Existing Technology; (ii) use the Pre-Existing Technology for any other purpose, other than the City Program; (iii) make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, or import any product that incorporates, embodies and/or is based upon the Pre-Existing Technology; (iv) sublicense, distribute or otherwise transfer to a third party any of the Pre-Existing Technology by itself or as incorporated into software or hardware; or (v) reverse engineer, disassemble, decompile or attempt to derive the source code or underlying ideas or algorithms of the Pre-Existing Technology. Any additional use of the Pre-Existing Technology shall require a separate written license agreement.

5.03 Compliance with MWBE 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 §§ 28-31 to 28-40 and 28-51 to 28-90 (the “MWBE Ordinance”); and any Rules and Regulations promulgated pursuant thereto. The contract goal for MWBE participation established for this Agreement by the Division of Small Business Opportunity (“DSBO”) is Fifteen Percent (15%).

(b) Under § 28-68, D.R.M.C., the Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the MWBE participation upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting MWBEs performing on this Agreement through contract amendment, or other modification under § 28-70, D.R.M.C. The Consultant acknowledges that:

(1) If directed by DSBO, the Consultant is required to develop and comply with a Utilization Plan in accordance with § 28-62(b), D.R.M.C. Along with the Utilization Plan requirements, the Consultant must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the Utilization Plan and achieving
the MWBE participation goal. The Utilization Plan is subject to modification by DSBO.

(2) If contract modifications are issued under the Agreement, the Consultant shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases under § 28-70, 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 of the change by the City.

(3) If amendments or modifications are issued under the contract that include an increase in the scope of work of this Agreement, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such or contract modification shall be promptly submitted to DSBO for notification purposes.

(4) Those amendments or other contract modifications that involve a changed scope of work that cannot be performed by existing project subconsultants are subject to the original goal. The Consultant shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with § 28-70, D.R.M.C. The Consultant must also satisfy the requirements under §§ 28-60 and 28-73, D.R.M.C., with regard to changes in scope or participation. The Consultant shall supply to the DSBO Director all required documentation under §§ 28-60, 25-70, and 28-73, D.R.M.C., with respect to the modified dollar value or work under the contract.

(5) If applicable, for contracts of one million dollars ($1,000,000.00) and over, the Consultant is required to comply with § 28-72, D.R.M.C., regarding prompt payment to MWBEs. Payment to MWBE subcontractors shall be made by no later than thirty-five (35) days after receipt of the MWBE subcontractor’s/subconsultant’s invoice.

(6) Failure to comply with these provisions may subject the Consultant to sanctions set forth in § 28-76 of the MWBE Ordinance.

(7) Should any questions arise regarding DSBO requirements, the Consultant should consult the MWBE Ordinance or may contact the Program’s designated DSBO representative at (720) 913-1999.

5.04 Taxes and Licenses. The 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 Consultant shall furnish the Executive Director, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes. The Consultant shall promptly pay all owed bills, debts and obligations it incurs performing Work under this Agreement and shall not 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.
5.05 Examination Of Records. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Consultant’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Consultant to make disclosures in violation of state or federal privacy laws. Consultant shall at all times comply with Denver Revised Municipal Code 20-276.

5.06 Assignment. 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 Director’s prior written consent. Any assignment without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or to terminate the Agreement because of unauthorized assignment. In the event of any unauthorized assignment: (i) the Consultant shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any assign.

5.07 No Discrimination in Employment. In connection with the performance of Work under this 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, protective hairstyle, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Consultant shall insert the foregoing provision in all subcontracts.

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

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

(d) **Waiver of Subrogation.** For all coverages, with the exception of Professional Liability, 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) **Professional Liability (Errors & Omissions).** Consultant shall maintain limits of $1,000,000 per claim and $1,000,000 policy aggregate limit. The policy shall be kept in force for the term of the contract and for three (3) years thereafter or a tail policy shall be placed.

5.09 **Defense and Indemnification.**

(a) To the fullest extent permitted by law, Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the Work performed under this Agreement that are attributable to the negligence or fault of the Consultant or the Consultant’s agents, representatives, subcontractors, or suppliers (“Claims’). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.

(b) Consultant’s obligation to defend and indemnify may be determined after Consultant’s liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the parties. Consultant’s duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.

(c) Consultant will 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.

(e) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

(f) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

5.10 **Colorado Governmental Immunity Act.** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
5.11 Contract Documents; Order of Precedence. This Agreement consists of Sections 1 through 5, which precede the signature page, and the following attachments, which are incorporated herein and made a part hereof by reference:

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Attachment 1</td>
<td>Program Site</td>
</tr>
<tr>
<td>Exhibit A</td>
<td>Consultant’s Scope of Work</td>
</tr>
<tr>
<td>Exhibit B</td>
<td>Consultant’s Rates</td>
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<tr>
<td>Exhibit C</td>
<td>Consultant’s Key Personnel</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>ACORD Insurance Certificate</td>
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</tbody>
</table>

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
- Attachment 1
- Exhibits A through D

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

5.13 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).

5.14 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, DRMC §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

(b) The Consultant agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed 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 or subconsultant(s) by placing the Consultant’s own interests, or the interests of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole
discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Consultant written notice which describes the conflict. The Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

(c) Consultants shall not use City resources for non-City business purposes. City resources include computers, computer access, telephones, email accounts, copiers, printers, office space and other City facilities and equipment.

(d) As a result of the services Consultant will provide, Consultant will have access to non-public information regarding contemplated or actual City projects. Access to non-public information may result in Consultant having an actual and/or perceived unfair advantage in procurements to select firms to provide design or construction management services. In addition, serving in a program or project management role and a design or construction management role on the same project may result in an organizational conflict of interest. The City reserves the right to determine that a conflict exists.

(e) Under no circumstances shall the Consultant in its role providing program management Services, oversee or approve its own Work or the Work of its subconsultants or subcontractors under an agreement to provide owner’s representative Services.

5.15 No Third-Party Beneficiaries. 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.

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

5.17 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 DRMC § 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.

5.18 Proprietary or Confidential Information.

(a) Consultant acknowledges and accepts that, in performance of all Work under the terms of this Agreement, Consultant will 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 would be damaging to the City or third parties. Consultant agrees that all Proprietary Data, confidential information or other non-public 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.

(b) Consultant acknowledges that as a result of the Services it provides pursuant to this Agreement it will have access to non-public information that, if disclosed, would give proposers and bidders an unfair competitive advantage in selection processes used to award contracts. Consultant will not disclose non-public information without the City’s written permission. Consultant agrees to abide by written direction from the City concerning communications and interactions with contractors and consultants. Consultant is responsible for monitoring subconsultant and subcontractor compliance with these requirements.

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

5.20 **Compliance with all Laws.** All Services provided pursuant to this Agreement shall be performed in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver and any grant providing funding for this Agreement.

5.21 **Debarment and Suspension (Executive Orders 12549 and 12689).** Consultant confirms neither they, nor their subcontractors or subconsultants, are parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

5.22 **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 DRMC § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

5.23 **Survival of Certain Contract 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.

5.24 **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.
5.25 **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.

5.26 **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, to the following addresses:

- **to the City:**
  Department of Transportation and Infrastructure  
  Attention: Executive Director  
  201 West Colfax Avenue, Dept. 608  
  Denver, Colorado 80202

- **with a copy to:**
  City Attorney’s Office  
  Attention: Director of Municipal Operations  
  201 West Colfax Avenue, Dept. 1207  
  Denver, Colorado 80202

- **to the Consultant:**

  ____________________________________  
  ____________________________________

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.

5.27 **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.

5.28 **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.

5.29 **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.

5.30 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.

5.31 Electronic Signatures and Electronic Records. Consultant and City consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City and Consultant 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.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
Attachment 1 – Diversity and Inclusiveness* in City Solicitations Instructions

Include a copy of the completed form with your Submittal. Click on the following link to complete and download the form:

Diversity and Inclusiveness* in City Solicitations Information Request Form (openforms.com)

Denver Executive Order No. 101 establishes strategies between the City and private industry to use diversity and inclusiveness to promote economic development in the City and County of Denver and to encourage more businesses to compete for City contracts and procurements. The Executive Order requires, among other things, the collection of certain information regarding the practices of the City’s contractors and consultants toward diversity and inclusiveness and encourages/requires City agencies to include diversity and inclusiveness policies in selection criteria where legally permitted in solicitations for City services or goods.
Attachment 2 – Consultant/Sub-Consultant Team Members

CONSULTANT TEAM MEMBERS

Prime Consultant: 

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

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

Prime Consultant: __________________________________________

The additional expenses of the Consultant reimbursable by the City shall include:

1. Actual cost of reproduction of drawings and specifications requested by the City.
2. Travel/transportation costs shall not be reimbursable by the City for Prime Consultant.

The Consultant will be required to submit a complete list of pricing reimbursable items.

Actual Costs

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<th>Item</th>
<th>Charge Rate</th>
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<tr>
<td>Reproducibles</td>
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**SUB-CONSULTANT TEAM MEMBERS**

Sub-Consultant: ________________________________

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

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REIMBURSABLE EXPENSES

Sub-Consultant: ____________________________________________

The additional expenses of the consultant reimbursable by the City shall include:

1. Actual cost of reproduction of drawings and specifications requested by the City.
2. Travel cost may apply for sub consultants not local to the project. Travel shall be pre-approved by the DOTI PM.

The Consultant will be required to submit a complete list of pricing reimbursable items.

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