



City of Boulder

Request for Proposals

RFP No. 43-2015

**Broadband Feasibility
Study**

Issue Date: June 10, 2015

Due Date: July 10, 2015, 4 p.m. (Mountain Time)

CITY OF BOULDER, COLORADO
NOTICE OF CALL FOR PROPOSALS - RFP NO. 43-2015
CONSULTING/PROFESSIONAL SERVICES

The City of Boulder, Colorado, is seeking proposals for:

Broadband Feasibility Study

In accordance with the specifications of the RFP, sealed proposals will be received in the office of the Purchasing Coordinator until 4 P.M. Mountain Time, Friday, July 10, 2015. Late proposals will not be considered.

A copy of this Request for Proposals (RFP) may be obtained from the website at:
www.rockymountainbidsystem.com

Sealed proposals shall be plainly marked 'RFP No. 43-2015, Broadband Feasibility Study, 4 P.M., Friday, July 10, 2015'. Proposals can be mailed to:

Pam Andrus
City of Boulder – Purchasing Division
P.O. Box 791
Boulder, Colorado 80306-0791

Hand delivered proposals or those not delivered by the USPS must be delivered to the office of the Purchasing Coordinator, 1777 Broadway, Boulder, Colorado 80302.

Proposals shall be prepared at the bidder's expense and becomes a city record and therefore a public record.

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

The lowest responsible and best proposal shall be accepted; provided, however, that the city, acting through its duly authorized representatives, shall have the right to reject any and all proposals and waive any informality or irregularity contained in said proposal.

Dated this 10th day of June, 2015.

City of Boulder, Colorado
A Municipal Corporation

By: _____
City Clerk

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Section I: General RFP Information

A. OVERVIEW

The City of Boulder seeks qualified vendors to conduct a broadband feasibility study as a key input in the development of a comprehensive community telecommunications strategy. The city reserves the option to include additional related services in the resulting vendor contract after reviewing vendor proposals. A more detailed description of the desired deliverables is provided in the following sections of this document.

The city will consider proposals from single vendors or from multiple vendors working as a team, though a prime contractor is highly desired in the case of the latter. The ideal vendor will have excellent technical and analytic depth in areas of interest to the city under this RFP, and must be highly-effective communicators, particularly in translating technical concepts to non-technical audiences. The city prefers firms with experience working with public sector organizations, having worked with municipalities both larger and smaller than Boulder.

The city is employing this procurement method to both explore the costs and logistics of procuring the described services, while also evaluating alternative mixes of additional service offerings from a diverse vendor community. As such, the city reserves the right to reject any and all proposals or any part thereof, to waive any formalities or informalities, to award the contract to the most responsive and responsible respondent(s) as deemed in the best interest of the city, or to suspend the procurement if the desired outcomes are not achieved.

B. BACKGROUND, PROJECT JUSTIFICATION AND KEY DRIVERS

The following information is provided to assist respondents in understanding the direction and intentions of the city in procuring the services included in this RFP.

1. General:

The City of Boulder, Colorado is located 35 miles northwest of Denver, with a population of just over 100,000 residents. The city is approximately 25 square miles in size, surrounded on all sides by nearly 65 square miles of city-owned open space. Boulder is home to the University of Colorado at Boulder and its 36,000 students, faculty and staff; has a vibrant local economy, with significant industry clusters in “clean tech,” natural and organic foods, and active living/recreation; and is home to several federal laboratories, including the National Center for Atmospheric Research, National Institute of Standards and Technology, and the National Oceanic and Atmospheric Administration.

The city has a strong and longstanding commitment to environmental stewardship and community sustainability and has been the recipient of [significant recognition](#) for its history of innovation. The city government organization values customer service and emphasizes transparency and communication with community members.

The city operates as a full-service municipal organization under a Council-Manager form of government and has a fiscal year 2015 total budget of approximately \$317 million

For the purposes of this project, it is noteworthy that the city is engaged in a significant effort to consider the municipalization of local electric utility services as a means of fostering the community's Energy Future goals. In early-2015, the city selected Schneider Electric to perform a comprehensive assessment of automation and related IT infrastructure needs to support a municipal electric utility both on "day one" and beyond. Draft functionality requirements and a gap study are scheduled to be completed in early-August 2015. To aid the successful firm, the city will work as needed with Schneider Electric to arrange interviews and provide access to written deliverables if deemed disclosable by the city. Vendors are encouraged to thoroughly review the [Boulder Energy Future website](#) for background on the municipalization initiative.

2. Past and Present Broadband Efforts

In November of 2014, Boulder voters overwhelmingly approved a city-sponsored ballot initiative exempting the city from Colorado Senate Bill 05-152 (SB-152), which restricts local governments from providing telecommunications services in competition with the private sector. The city had no definitive plans for providing such services, wishing instead to use the ballot measure to gauge the public's broad interest in future efforts. While the Boulder City Council is interested in evaluating all possible business models for providing broadband services in the future, they have expressed a particular interest in public-private partnership alternatives.

In early-2015, the city formed a community Broadband Working Group to work in concert with city staff on the development of a broadband vision, as well as alternatives for using the city's telecommunications resources for the broader benefit of the community. At its May 2015 meeting, the Working Group endorsed the release of this RFP as a vital next step in that effort.

Comprehensive information on the city's broadband efforts, including details on the activities of the Broadband Working Group, can be found at [connectboulder.net](#).

3. Draft Broadband Vision Statement

The Boulder Broadband Working Group has developed the following draft vision statement. It is anticipated that a final version (closely mirroring this draft) will be completed by the Working Group at its meeting in late-June.

Draft Vision: Gigabit Broadband to Boulder Homes and Businesses (May 21, 2015)

Our vision is to provide a world-class community telecommunications infrastructure to Boulder for the 21st century and beyond, facilitated by new access to the public's local telecommunications assets. We acknowledge that broadband is a critical service for quality of life, as is the case with roads, water, sewer, and electricity. Every home, business, non-profit organization, government entity, and place of education should have the opportunity to connect affordably, easily, and securely. Boulder's broadband services will be shaped by the values of the community.

We intend to empower our citizens and local businesses to be network economy producers, not just consumers of network information and data services. We realize that doing so requires access to gigabit-class broadband infrastructure to support these needed services and capabilities:

1. **Broadband Infrastructure:** *Provide the infrastructure to enable every Boulder home, business, visitor, and public or private institution the opportunity to access affordable high speed broadband connections to the Internet, and other networks.*
2. **Open Access:** *Demonstrate, support, and build a non-discriminatory, open-access infrastructure that should, to the maximum extent possible, be open to all users, service providers, content providers, and application providers and be usable via all standard commercial devices.*
3. **Competitive Marketplace:** *Facilitate a local broadband marketplace that is as competitive as reasonably possible.*
4. **Compete Globally:** *Provide stakeholders with the broadband capacity, affordability and local, regional and national connectivity they need to compete successfully in the global marketplace.*

We envision significant progress toward an operational network in 1-2 years with commitments from providers, community stakeholders, regional partners, and a common, shared vision to make gigabit-class bandwidth available to all residents, businesses and workers in Boulder.

4. High-level Overview of City Fiber Optic and Conduit Infrastructure

The city's network infrastructure includes 179 miles of fiber optic cable and associated conduit serving more than 60 city facilities, as well as 36 miles of vacant conduit. The network has been constructed incrementally over the past 20-years through two primary methods: (a) compensation from telecommunications service provider for use of city assets and rights-of-way while constructing their local commercial networks; and (b) direct city investment in conduit and fiber concurrent with public works projects. The network is "debt-free". The availability of dark fiber and vacant conduit varies throughout the network given the incremental build-out strategy employed over the years. The city considers detailed information on the network confidential and will disclose further information to the successful firm after their acceptance of non-disclosure provisions in the negotiated agreement.

The city's fiber network interfaces with the Boulder Valley School District's (BVSD) extensive, dual-ring fiber optic network both within the city limits and outlying areas of Boulder County. The city also has fiber connectivity to both the City of Longmont and a co-location/peering facility in downtown Denver. Finally, the city is lead agency for the Boulder Research and Administration Network (BRAN) – a multi-jurisdictional private fiber network used by the city to interconnect many of its facilities for data and voice services. More information on BRAN is available [here](#).

Section II: Requested Services and Deliverables

The City of Boulder is interested in engaging a highly-qualified and experienced consulting firm to assist in providing detailed, actionable guidance for the planning and implementation of a successful community broadband initiative. The results of this study are intended to contribute considerably to the achievement of the city's broadband vision with the highest quality and greatest return for our community stakeholders.

As evidenced by the use of a Request for Proposals (RFP) process to solicit proposals, the city will rely on the experience and creativity of firms to design proposals and provide services that successfully complete the following general project tasks:

- 1) Evaluate the current and future demand for broadband products and services in the city through a range of efforts and methodologies, including but not limited to conversations with:
 - a) Public stakeholders (e.g. city and regional government agencies, educational institutions, federal laboratories and agencies, etc.).
 - i) Consider the telecommunications needs of a potential municipal electric utility (e.g. support of utility monitoring, control, metering and outage management, etc.).
 - b) Private stakeholders (e.g. local businesses, business organizations, health care providers, digital divide advocates, other interested consumers and interest groups).
 - c) Broadband providers regarding the demand for, and adoption of, their products.
- 2) Research and evaluate the current supply of broadband communications assets, products and services in the city and region through a range of efforts and methodologies identified by the successful firm.
- 3) Consider how the city might use its fiber optic and related assets to enable world-class, cooperative public/private broadband services, while enhancing service quality, synchronous speeds, cost-effectiveness and competition in Boulder.
 - a) Conduct a comprehensive engineering analysis to inform the potential uses of surplus, city-owned fiber and conduit resources in achieving the city's broadband goals. This analysis should provide key data on the likely costs and logistics for the city and/or a private provider to supply supplemental "middle mile" and "last mile" fiber to residences, businesses, etc.
- 4) Consider opportunities to pursue a regional approach; leveraging telecommunications assets in support of regional cooperation.
- 5) At a point in the analysis that proves most advantageous, prepare and aid in the administration of an exploratory Request for Information (RFI) that the city will distribute to potential partners to gauge private interest in using public infrastructure to expand broadband services in Boulder. The city views this as an expeditious, "real-time" input to the overall analysis that will enhance its value and actionability.

- 6) Using the results of the entire analysis, develop a comprehensive written report that presents alternatives to address the engineering and business parameters for deploying broadband services throughout the community, assuming the use of available city telecommunications assets. The analysis must consider a wide continuum of business models and engineering options, highlighting associated costs, alternative financing methods, as well as risk, timing and service quality considerations. The report must conclude the analysis by identifying a recommended strategy and associated action plan for its implementation.

Section III: Administrative Information and Requirements

A. RFP OFFICIAL CONTACT

Upon release of this RFP, all vendor communications should be directed to the RFP Coordinator listed below. Unauthorized contact regarding this RFP with other city employees may result in disqualification. Any oral communications will be considered unofficial and non-binding on the city. Vendors should rely only on written statements issued by the RFP Coordinator.

Name: RFP Coordinator
Don Ingle, Director of IT
Address: City of Boulder
Information Technology
3065 Center Green Drive, 2nd Floor
Boulder, Colorado 80301
Telephone: 303.441.4183
E-mail: ingled@bouldercolorado.gov

B. PROCUREMENT SCHEDULE

The procurement schedule for this project is as follows:

Note: The city reserves the right to adjust this schedule as necessary.

Milestone	Date
Release RFP to Vendors	June 10, 2015
Vendor Questions (if any) Due	June 22, 2015
Answers to RFP Questions Released	June 24, 2015
Proposal Responses Due	July 10, 2015
Finalists selected	July 17, 2015
Finalist interviews (please reserve these dates)	July 22-23, 2015
Vendor Selection (target)	July 28, 2015
Contract Negotiations Complete	To be determined
Contract Signed	To be determined
Work Begins	To be determined
Final Acceptance of Work Product	To be determined

C. QUESTIONS REGARDING THE RFP

Vendors who request clarification of the RFP's requirements may submit written questions to the RFP Coordinator by 4 p.m. (Mountain Time) on June 22, 2015. Written copies of all questions and answers will be provided to all vendors who have submitted letters of intent as further described below. An email attachment sent to ingled@bouldercolorado.gov is preferred.

D. LETTER OF INTENT

Vendors wishing to submit proposals are encouraged to provide a written letter of intent to propose by June 22, 2015. An email attachment sent to ingled@bouldercolorado.gov is optimal. The letter must identify the name, address, phone, fax number, and e-mail address of the person who will serve as the key contact for all correspondences regarding this RFP.

A letter of intent is desired in order for the city to provide interested vendors with a list of any questions received and the city's answers to those questions.

E. PROPOSAL PREPARATION

GENERAL INFORMATION

Vendors must prepare proposals using an electronic version of the forms provided in Section IV of this RFP. This approach will allow all the proposals received to be compared in a consistent manner.

PROPOSAL MATERIALS (ENVIRONMENTAL PURCHASING POLICY)

For purposes of review and in the interest of the city's Sustainable Paper Use Policy and sustainable business practices in general, the city encourages the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. The city discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers. Vendors are encouraged to print/copy on both sides of a single sheet of paper wherever applicable (if sheets are printed on both sides, it is considered to be two pages). Color is acceptable, but content should not be lost by black-and-white printing or copying.

F. PROPOSAL SUBMISSION

The following provides specific instructions for submitting your sealed proposal.

Due Date:	<i>Sealed Proposals must be received by the Purchasing Coordinator no later than July 10, 2015, at 4 p.m. (Mountain Time).</i> Sealed proposals shall be plainly marked "RFP No. 43-2015, Consulting Services". Late proposals will not be accepted nor will additional time be granted to a specific vendor. All proposals and accompanying documentation will become the property of the city and will not be returned.
Number of Copies:	A total of two (2) paper copies and an electronic copy (CD or Thumb Drive) of the vendor's proposal, in its entirety, must be received as specified above. The city will not accept facsimiles.
Address for Submission:	<u>Mailed Proposals:</u> Pam Andrus City of Boulder – Purchasing Division Attn: RFP No. 43-2015 P.O. Box 791 Boulder, Colorado 80306-0791 <u>Hand delivered proposals:</u> Office of the Purchasing Coordinator Attn: RFP No. 43-2015 1777 Broadway Boulder, Colorado 80302

G. EVALUATION PROCEDURES

A cross-departmental committee of city staff will evaluate the submitted proposals.

The evaluators will consider how well the vendor's proposed solution meets the needs of the city as described in the vendor's response to each requirement and form. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal. The evaluation process is not designed to simply award the contract to the lowest cost vendor. Rather, it is intended to help the city select the vendor with the best combination of attributes, including price, based on the evaluation factors. The city reserves the right to require that a group of finalist vendors make a presentation to a selection team.

Section IV: Required Proposal Response Forms

The proposal must provide a summary of the vendor's qualifications to perform the duties outlined in Section II – Requested Services and Deliverables. This section contains forms vendors must complete to properly submit their proposals. Vendors must complete all the forms in this section as well as other requests for information contained herein. The following forms are included:

- 1) Cover Letter
- 2) Proposal Summary
- 3) Acceptance of Terms and Conditions
- 4) General Vendor Information
- 5) Project Staff List
- 6) Key Project Staff Background Information
- 7) Customer Reference
- 8) Task Area Descriptions
- 9) Project Schedule and Work Plan
- 10) Fee Schedule and Cost Proposal

PROPOSAL PREPARATION INSTRUCTIONS

To prepare your proposal, follow these instructions:

1. Using your word processing application's copy and paste commands (Microsoft® Word 2007 or later is required), copy sections and forms as necessary and paste them into a new file.
2. Complete all the forms in your word processing and spreadsheet applications as applicable. Also, please create a table of contents with page numbers. Delete instructions (i.e., materials contained in brackets) from each form.
3. When your proposal is finished, refer to the proposal submission instructions in Section III.

FORM 1: COVER LETTER

[Use this space to compose a cover letter for your proposal. All proposals must include a cover letter signed by a duly constituted official legally authorized to bind the applicant to both its proposal and cost schedule. NOTE: The cover letter is not intended to be a summary of the proposal itself; this is accomplished in Form 2.

The cover letter must contain the following statements and information:

1. "Proposal may be released in total as public information in accordance with the requirements of the laws covering same." (Any proprietary information must be clearly marked.)
2. "Proposal and cost schedule shall be valid and binding for ONE HUNDRED EIGHTY (180) days following the proposal due date and will become part of the contract that is negotiated with the city."
3. Company name, address, and telephone number of the vendor submitting the proposal.
4. Name, title, address, e-mail address, and telephone number of the person or persons who are authorized to represent the vendor and to whom correspondence should be directed.
5. Proposals must state the proposer's federal and state taxpayer identification numbers.
6. Please complete and attach the Non-Collusion Certificate included as Attachment A.

TEXT WITHIN THE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

FORM 2: PROPOSAL SUMMARY

[Use this form to summarize your proposal and your vendor's qualifications. Additionally, you may use this form at your discretion to articulate why your firm is pursuing this work and how it is uniquely qualified to perform it.

Your proposal summary is not to exceed two pages.

THE TEXT WITHIN THESE BRACKETS IS TO BE DELETED AND REPLACED BY YOUR PROPOSAL SUMMARY.]

FORM 4: GENERAL VENDOR INFORMATION

[Use this form to provide information about your firm.

THE TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

1. Please complete the following table:

Name of parent company	
Length of time in business	
Length of time in business of providing proposed services	
Gross revenue for the prior fiscal year (in US dollars)	
Percentage of gross revenue generated by proposed services	
Total number of clients	
Total number of clients in the proposed service area	
Number of public sector clients	
Number of full-time personnel in:	
◆ Consulting	
◆ Sales, marketing, and administrative support	
◆ Other (please note relevant staff)	

2. Where is your headquarters located? Field offices?

3. Which office would service this account?

4. If the vendor has had a contract terminated for default during the past five years, all such incidents must be described. Termination for default is defined as notice to stop performance due to the vendor's nonperformance or poor performance; and the issue was either (a) not litigated or (b) litigated, and such litigation determined the vendor to be in default.

In the space provided, submit full details of all terminations for default experienced by the vendor during the past five years, including the other party's name, address, and telephone number. Present the vendor's position on the matter. The city will evaluate the facts and may, at its sole discretion, reject the vendor's proposal if the facts discovered indicate that completion of a contract resulting from this RFP may be jeopardized by selection of the vendor.

If no such terminations for default have been experienced by the vendor in the past five years, declare so in the space provided.

If the vendor has had a contract terminated for convenience, nonperformance, non-allocation of funds, or any other reason which termination occurred before completion of the contract during the past five years, describe fully all such terminations, including the name, address, and telephone number of the other contracting party.

[Please use this space to respond to Question 4 of Form 4. Your response may take as many pages as needed to fully answer the question. TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

FORM 5: PROJECT STAFF LIST

[Please complete the following table to identify the proposed project staff members (including subcontractors) that will assist the city with this project. Indicate the percent of time each staff member will be dedicated to the project and each member's years of experience in the areas covered by this RFP. Add additional lines as necessary for each instance of the list. Use your word processing application's copy and paste functions to create additional copies of this table as necessary. TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE]

Staff member name (also note associated subcontracting firm's name as applicable)	Title	Percent of staff member's time dedicated to project	Number of years in broadband consulting

FORM 6: KEY PROJECT STAFF BACKGROUND INFORMATION

[Complete the following table for each of the key project staff members. Use your word processor's copy and paste commands to create additional copies of this table as necessary. Please allow one page for each table. **At a minimum, key staff must include your proposed project manager and key contributors to this project.** TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

Vendor Name	
Staff member name	
Position in the company	
Length of time in position	
Length of time at company	
Project position and responsibilities	
Education	
Previous work experience	
Technical skills and qualifications for the project position. Include specific skills and experience associated with the work to be completed under this RFP.	

FORM 7: CUSTOMER REFERENCE FORM

[Using the tables below, please list all public sector clients for whom you have completed broadband feasibility study projects relevant to this RFP over the past three (3) years. Use your word processor's copy and paste functions to create additional tables as needed. TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

Customer/client name				
Reference name				
Title				
Phone number				
Mailing address				
Fax number				
URL where plan copy is available for view (if applicable)				
Customer Size	Service Description	Start Date	End Date	Contract amount

FORM 8: TASK AREA DESCRIPTIONS

[Describe your overall approach to fulfilling the tasks and objectives included in Section II – Requested Services and Deliverables. Your combined response to this form should not exceed twenty-five (25) pages. TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

FORM 9: PROJECT SCHEDULE AND WORK PLAN

[Provide a detailed project implementation plan that includes:

- ◆ A Gantt chart showing beginning and end dates of all tasks (the actual project start date will be determined during contract negotiations).
- ◆ A table listing vendor staff assignments and proposed labor hours for all tasks.
- ◆ A brief description of each task and its work products.
- ◆ A description of each proposed deliverable.

The project plan must present the vendor's approach for completing the tasks and objectives included in its response to Form 8.

Insert pages as needed to allow space for your Gantt chart and work plan. TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

Gantt Chart

[Use this section to include your Gantt chart showing beginning and end dates of all tasks.

THE TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

Vendor Staff Assignments/Hours

[Use this section to include a table of vendor staff assignments and proposed labor hours for all tasks. Signify if staff assigned is a designated individual or FTE equivalent.

THE TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

Task Descriptions

[Use this section to include brief descriptions of all tasks, milestones and associated work products.

THE TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

Deliverables

[Use this section to include brief descriptions of all project deliverables.

THE TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

FORM 10: FEE SCHEDULE AND COST PROPOSAL

[Provide a detailed fee schedule and project cost proposal as follows:

The proposal must contain a fee schedule and detailed cost proposal that includes estimated hours, rates, and overall price (including all estimated travel and ancillary expenses). It is highly desired that the cost proposal tie closely to your response to Form 9 – Project Schedule and Work Plan.

It is of critical importance that vendors use this cost proposal form to clearly delineate the relevant cost categories, associated unit pricing and overall estimated cost for the project so as to alleviate ambiguities over proposed project scope and associated costs.

THE TEXT WITHIN THESE BRACKETS IS TO BE DELETED IN YOUR RESPONSE.]

Appendices

RFP AMENDMENTS

The city reserves the right to change the schedule or issue amendments to the RFP at any time. The city also reserves the right to cancel or reissue the RFP.

VENDOR'S COST TO DEVELOP PROPOSAL

Costs for developing proposals in response to the RFP are entirely the obligation of the vendor and shall not be chargeable in any manner to the city. This includes travel to and from the city of Boulder for the purposes of participating in interviews as part of the selection process.

WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing. Proposals cannot be changed or withdrawn after the time designated for receipt.

REJECTION OF PROPOSALS – WAIVER OF INFORMALITIES OR IRREGULARITIES

The city reserves the right to reject any or all proposals, to waive any minor informalities or irregularities contained in any proposal, and to accept any proposal deemed to be in the best interest of the city.

PROPOSAL VAILIDITY PERIOD

Submission of the proposal will signify the vendor's agreement that its proposal and the content thereof are valid for 180 days following the submission deadline and will become part of the contract that is negotiated between the city and the successful vendor.

CONTRACT AWARD AND EXECUTION

- ◆ The city reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be initially submitted on the most favorable terms the vendors can offer. It is understood that the proposal will become a part of the official file on this matter without obligation to the city.
- ◆ The general conditions and specifications of the RFP and as proposed by the city and the successful vendor's response, as amended by agreements between the city and the vendor, will become part of the contract documents. Additionally, the city will verify vendor representations that appear in the proposal. Failure of the vendor's products to meet the

mandatory specifications may result in elimination of the vendor from competition or in contract cancellation or termination.

- ◆ The vendor selected as the apparently successful vendor will be expected to enter into a contract with the city.
- ◆ If the selected vendor fails to sign the contract within five (5) business days of delivery of the final contract, the city may elect to cancel the award and award the contract to the next-highest-ranked vendor.
- ◆ No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

BASELINE PROFESSIONAL SERVICES AGREEMENT BOILERPLATE FOR THE CITY OF BOULDER

This Professional Services Agreement (this “Agreement”) is made as of this ____ day of _____, 20__, (the “Effective Date”) by [INSERT LEGAL NAME], a [INSERT STATE OF INCORPORATION] [INSERT FORM OF ENTITY] (“Contractor”), and the City of Boulder, Colorado, a Colorado home-rule municipality (the “City”). Contractor and the City may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

A. City desires that Contractor, from time to time, provide certain consulting services, project management services, systems analysis services, business analysis services, training services, and/or related services as described in the Statement of Work (the “Services”); and

B. Contractor desires to perform such Services on behalf of the City on the terms and conditions set forth herein.

In consideration of the foregoing and the terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

GENERAL TERMS

DEFINITIONS

- Definitions.** As used in this Agreement, the following words and phrases shall have the meaning given in this Section. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is

permissive. Words not defined in this Section or the attached Statement of Work shall be given their common and ordinary meaning.

(a) **“City Data”** means any data or information of the City that is provided to or obtained by Contractor in the performance of its obligations under this Agreement, including data and information with respect to the businesses, customers, operations, facilities, products, consumer markets, assets, and finances of the City. City Data also shall mean any data or information created, generated, collected or processed by Contractor in the performance of its obligations under this Agreement, including Software Configuration data, data processing input and output, asset information, third party service and product agreements, contract charges, and retained and pass-through expenses.

(b) **“Intellectual Property Rights”** means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (1) rights associate with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (2) trademark and trade name rights and similar rights, (3) trade secret rights, (4) patents, designs, algorithms and other industrial property rights, (5) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, “rental” rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (6) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force

(including any rights in any of the foregoing).

(c) **“Open Source Software”** means third-party software that is available in source code form for which the source code and certain other rights normally reserved for copyright holders are provided under a software license that permits users to run, copy, study, change, improve and at times also to distribute the software.

(d) **“Work Product”** means anything created, developed, prepared, documented and/or delivered by Contractor specifically for the City under the terms and conditions of this Agreement, including all associated Intellectual Property Rights.

2. **Statement of Work.** This Agreement consists of the general terms found in these General Terms, along with Schedule A, “Statement of Work,” and any exhibits to Schedule A, all of which are attached hereto and incorporated herein by this reference. During the term hereof and subject to the terms and conditions contained herein, Contractor agrees to provide the Services and the Work Product, if any, described in the Statement of Work. In addition to describing the Services and any Work Product, the Statement of Work may also include specifications; the basis of compensation and payment schedule; the estimated length of time required to complete the Services, including the estimated start/finish dates; and other relevant information, including any modification of the General Terms.

3. **Change Orders and Extra Work.**

(a) **Change Orders.** By providing written notice to the other Party’s Project Manager, either Party may request a change in the Services. If a change causes an increase or decrease in the price or time required

for performance of the Services, as mutually determined by the Project Managers, a negotiated adjustment shall be made in the price and/or performance schedule and reflected in an amendment to the Statement of Work. Changes outside the general scope of the Services shall be governed by Section 3(b), below.

(b) **Extra Work.** By providing written notice to the Contractor’s Project Manager, City may request that Contractor perform extra work that is not directly related to the Project, so long as the reasonably estimated cost of such extra work is less than \$50,000. At its option, Contractor may submit, at no charge to City, a written proposal for such additional work, including a price/cost proposal, expenses related to travel, lodging and meals, a delivery schedule, and any other information reasonably related to such request. Within a reasonable time period requested by Contractor, City shall accept or reject such proposal. If Contractor chooses not to provide a proposal in response to City’s request, Contractor shall promptly notify City. Any extra work agreed upon by the Parties shall be described in an amendment to the Statement of Work, which shall also include the agreed-upon price. All other terms and conditions of this Agreement shall be applicable thereto.

4. **Project Managers.** In the Statement of Work, each Party shall designate one of its employees to be its “Project Manager,” who shall act for that Party on all matters related to this Agreement. Each Party shall notify the other in writing of any replacement of a Project Manager. The Project Managers shall meet as often as either one requests to review the status of the Services.

5. Performance of Services.

- (a) Performance.** Contractor shall perform the Services in a timely and professional manner (i) consistent with the specifications, if any, set forth in the Statement of Work; (ii) in compliance with City Security Policies (available online at: <http://www.bouldercolorado.gov/it/security-policy/connected-partner> and <http://www.bouldercolorado.gov/it/security-policy/admin-guide>); and (iii) in accordance with industry best practices. Contractor agrees to exercise the highest degree of professionalism, and to utilize its expertise and creative talents in completing the Services.
- (b) Collateral Services.** If any collateral services, functions or responsibilities not specifically described in the Statement of Work or an attachment thereto are an inherent, necessary or customary part of the Services or are required for proper performance or provision of the Services in accordance with the Agreement, they shall be deemed to be included within the scope of the Services to be delivered for the base charges, as if such services, functions or responsibilities were specifically described in the Agreement.
- (c) Delays.** Contractor agrees to notify the City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the Services. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.
- (d) Discrepancies.** If anything necessary for the clear

understanding of the Services has been omitted from this Agreement or it appears that various instructions are in conflict, Contractor shall secure written instructions from the City's Project Manager before proceeding with the performance of the Services affected by such omissions or discrepancies.

- 6. Staff.** Contractor is an independent contractor and neither Contractor nor Contractor's staff is or shall be deemed to be employed by the City. The City is hereby contracting with Contractor for the Services and Contractor reserves the right to determine the method, manner and means by which the Services will be performed. The Services shall be performed by Contractor or Contractor's staff, and the City shall not be required to hire, supervise or pay any assistants to help Contractor perform the Services. Except to the extent that Contractor's work must be performed on or with the City's computers or the City's existing software, all materials used in providing the Services shall be provided by Contractor.
- 7. Subcontracted Services.** Contractor shall be permitted to subcontract the performance of certain Services to a third party (each a "Subcontractor"), provided, that: (1) Contractor gives prior written notice to the City of the Subcontractor and the detailed nature and scope of the Services to be subcontracted; (2) the City consents in writing to the subcontracting of such Services to such Subcontractor; and (3) Contractor complies with the terms and conditions set forth below. Contractor shall remain responsible to the City in accordance with this Agreement for the Services performed by any Subcontractor (the "Subcontracted Services") to the same extent as if the Subcontracted Services were performed

by Contractor's employees, and any completion schedules, Specifications, security requirements and Service Levels applicable to Subcontracted Services shall continue to apply notwithstanding any such subcontracting. Contractor shall be solely responsible for all payments to any Subcontractor. Under no circumstances (including, without limitation, Contractor's failure to make timely and full payments to a Subcontractor) shall the City be liable to any Subcontractor for payment of any amounts. Contractor shall indemnify, defend and hold harmless the City from and against any loss, expense, obligation or liability incurred by the City arising out of claims made by any Subcontractor related to its performance of the Subcontracted Services or any matters related thereto. Contractor shall not permit any Subcontractor to perform any Services for the City unless and until Contractor has entered into a subcontract with such Subcontractor containing provisions at least as favorable to the City as those in this Agreement. Contractor shall use commercially reasonable efforts to obtain from Subcontractor and provide to the City any information concerning the Subcontractor reasonably requested by the City, including information regarding the Subcontractor's financial condition and ability to perform the Subcontracted Services.

8. **City Obligations.** The City shall provide timely access to City personnel, systems and information required for Contractor to perform its obligations hereunder. The City shall provide to Contractor's employees performing its obligations hereunder at the City's premises, without charge, a reasonable work environment in compliance with all applicable laws and regulations, including office space, furniture,

telephone service, and reproduction, computer, facsimile, secretarial and other necessary equipment, supplies, and services. With respect to all third party hardware or software operated by or on behalf of the City, the City shall, at no expense to Contractor, obtain all consents, licenses and sublicenses necessary for Contractor to perform the Services and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses.

9. **Rights in Work Product.**

(a) **Work-for-Hire.** Except as specifically agreed to the contrary in any Statement of Work, the Work Product produced by Contractor under this Agreement, if any, shall be considered a work-for-hire and shall be the property of the City.

(b) **Open Source Software.** Contractor shall not use Open Source Software in creating the Work Product without first (i) providing the City with a copy of the Open Source Software license terms and conditions applicable to the software program Contractor intends to use and (ii) receiving the express, written consent of the City to incorporate the Open Source Software into the Work Product. To the extent Open Source Software is incorporated into the Work Product, Contractor represents and warrants that the use of such Open Source Software shall not materially affect the City's use of the Work Product.

(c) **Proprietary Software.** With respect to any proprietary software created by Contractor outside the scope of this Agreement, but included in the Work Product, Contractor unconditionally and irrevocably grants to the City during the term of such Intellectual Property Rights, a non-exclusive, perpetual, worldwide,

fully paid and royalty-free license to use such software.

- (d) **Documents.** All documents created by Contractor in the development of the Work Product, including without limitation meeting minutes, project plans and timelines, draft documents, design materials, questionnaires and surveys or any other written, electronic, or recorded information collected by Contractor in the course of developing the Work Product, regardless of the media used, shall be the property of the City. Contractor, upon request by the City, agrees to provide documents or any other materials developed specifically for the System in an electronically editable format (for example, Word or Excel). Contractor shall not provide copies of any documents or other material prepared under this Agreement to any other party without the prior written consent of the City.
- (e) **City Assets.** All assets acquired as part of the Work Product, including without limitation brands and web site URLs, shall be owned by the City.
- (f) **Ownership of City Data.** Contractor agrees that all City Data that are received, used or stored in connection with the Services provided hereunder or otherwise are, or shall be, and shall remain the exclusive property of the City and shall be deemed Confidential Information of the City. Contractor hereby waives any interest, title, lien or right to any such data. City Data shall not be (a) used by Contractor other than in connection with providing the Services, (b) disclosed, sold, assigned, leased, or otherwise provided to third parties by Contractor, except for

Subcontractors, so long as such Subcontractors are bound by written confidentiality provisions as least as restrictive as those that are set forth in this Agreement. Such Subcontractors may include but are not limited to organizations such as the payment card processing banks and credit card brands (e.g. Visa, MasterCard, etc.); or (c) commercially exploited by or on behalf of Contractor, its employees, Subcontractors or agents. City Data shall be furnished to the City, in such format as the City shall reasonably request, immediately upon the termination or expiration of this Agreement for any reason whatsoever.

- 10. **Invoices and Payment.** Unless otherwise provided in the Statement of Work, the City shall pay the amounts agreed to in the Statement of Work within thirty (30) days following the acceptance by the City of the Services and/or any Work Product. Acceptance procedures shall be outlined in the Statement of Work. If the City disputes all or any portion of an invoice for charges, then the City shall pay the undisputed portion of the invoice by the due date and shall provide the following notification with respect to the disputed portion of the invoice. The City shall notify Contractor as soon as possible of the specific amount disputed and shall provide reasonable detail as to the basis for the dispute. The Parties shall then attempt to resolve the disputed portion of such invoice as soon as possible. Upon resolution of the disputed portion, the City shall pay to Contractor the resolved amount.
- 11. **Taxes.** The City is not subject to taxation. No federal or other taxes (excise, luxury, transportation, sales, etc.) shall be included in quoted prices. The City shall not be obligated to pay or

reimburse Contractor for any taxes attributable to the sale of any Services that are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Contractor. Upon written notification by the City and subsequent verification by Contractor, Contractor shall reimburse or credit, as applicable, the City in a timely manner for any and all taxes erroneously paid by the City. The City shall provide Contractor with, and Contractor shall accept in good faith, resale, direct pay, or other exemption certificates, as applicable.

12. Out of Pocket Expenses. Contractor shall be reimbursed only for expenses that are expressly provided for in the Statement of Work or that have been approved in advance in writing by the City. Prior to reimbursement, Contractor shall furnish to the City such documentation for authorized expenses as the City may reasonably request.

13. Audits. Contractor shall maintain, and shall cause its Subcontractors to maintain, complete and accurate records of and supporting documentation for all transactions, financial and non-financial, that result from or are created in connection with Contractor's performance of its material financial and operational obligations under this Agreement ("Contractor Records"). With respect to the amounts chargeable to and payments made by the City under this Agreement, Contractor Records shall be kept in accordance with generally accepted accounting principles applied on a consistent basis. Contractor shall, and shall cause its Subcontractors to, provide to the City (and internal and external auditors, inspectors, regulators and other representatives that the City may designate from time to time) access

at reasonable hours to Contractor personnel, to the facilities at or from which Services are then being provided and to Contractor Records and other pertinent information, all to the extent relevant to the Services and Contractor's obligation under this Agreement. Such access shall be provided for the purpose of performing audits and inspections of the City and its businesses, to (1) verify the accuracy and completeness of Contractor's invoices, (2) examine the systems that process, store, support and transmit that data, (3) examine the controls (e.g., organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and the security, disaster recovery and back-up practices and procedures; (4) examine Contractor's performance of the Services; (5) verify Contractor's reported performance against the applicable Service Levels; (6) examine Contractor's measurement, monitoring and management tools; and (7) enable the City to meet applicable legal, regulatory and contractual requirements. Contractor shall provide any assistance reasonably requested by the City or its designee in conducting any such audit.

14. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall continue unless (i) the reasonable annual value of the Services is estimated to be \$50,000 or more or (ii) this Agreement is terminated as provided in this Section.

(a) Convenience. The City may, without cause and without penalty, terminate the provision of Services upon thirty (30) days prior written notice. Upon such termination, the City shall, upon receipt of an invoice from Contractor, pay Contractor for the Services actually rendered prior to the effective

date of such termination. Charges shall be based on time expended for all incomplete tasks listed in the Statement of Work and all completed tasks shall be charged as indicated in the Statement of Work.

(b) Material Breach. If either Party materially defaults in the performance of any term of this Agreement (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement by providing ten (10) days prior written notice of termination to the defaulting Party.

(c) Bankruptcy or Insolvency. Either Party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other Party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency laws is filed against that other Party and is not dismissed within sixty (60) days after it was filed.

(d) Return of Property. Upon termination of this Agreement, both Parties agree to return to the other all property, (including any Confidential Information, of the other Party that it may have in its possession or control. Contractor shall return to City all physical copies of City Data in Contractor's possession or control or,

if expressly permitted by City, destroy all physical copies of the City Data and delete all electronic copies of the products from its systems and certify in writing to City that such actions have all been completed; destroy all access and information to internal City networks; return all documentation and information of City systems and business processes; and vacate all City premises.

15. Confidential Information.

(a) Obligations.

(1) Records maintained by the City are subject to public disclosure pursuant to the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.* ("CORA"). Certain confidential business and other records are exempt under CORA or do not meet the definition of public records. If Contractor provides to the City documents that include trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data, including social security numbers, or if the City provides documents to Contractor that it considers confidential or otherwise not subject to disclosure under CORA ("Confidential Information"), the Party disclosing Confidential Information (the "Discloser") shall segregate any documents including Confidential Information from other documents provided to the Party receiving Confidential Information (the "Recipient") and shall clearly identify such documents with a stamp, watermark or other clear mark identifying the documents as Confidential Information.

(2) Subject to the provisions and exceptions set forth in CORA, the Recipient (i) shall use such Confidential Information only in order to fulfill its obligations under this Agreement (the "Purpose"); (ii) shall reproduce such Confidential Information only to the extent necessary for the Purpose; (iii) shall restrict disclosure of such Confidential Information to its and its affiliates' employees and agents who need to know such Confidential Information to carry out the Purpose and who are not direct competitors of the Discloser and shall require such employees and agents to undertake confidentiality and use obligations at least as restrictive as those Recipient assumes herein; (iv) shall not disclose such Confidential Information to any other party without prior written approval of the Discloser; and (v) shall protect such Confidential Information with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature, which shall be no less than reasonable care. If Recipient discloses Confidential Information to an employee, affiliate, or other person in accordance with the terms of this Agreement, any subsequent disclosure or use of such Confidential Information by such employee, affiliate, or other person shall be deemed a disclosure or use by Recipient and Recipient shall be responsible for such disclosure or use.

(3) The restrictions on use and disclosure of Confidential

Information shall not apply unless such Confidential Information, when in tangible, electronic or viewable form, is marked confidential or proprietary by Discloser, or when disclosed only orally is both identified as confidential or proprietary at the time of disclosure and summarized in a writing so marked and provided to Recipient within thirty (30) days following the oral disclosure; except that (i) any unmarked material and any verbally disclosed information that Recipient knows or reasonably should know to contain Confidential Information of the Discloser and all written or oral pricing and contract proposals exchanged between the Parties shall be subject to the use and disclosure restrictions of this Agreement. Within the 30-day period referenced above, all Confidential Information communicated only orally shall be subject to the use and disclosure restrictions of this Agreement.

(4) Each Party shall ensure that its employees, agents, representatives, and independent contractors are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section. Further, each Party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other Party. A Party shall undertake to immediately notify the other Party in writing of all circumstances

surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement.

- (5) Notwithstanding the foregoing, nothing in this Agreement shall restrict either Party with respect to information or data identical or similar to that contained in the Confidential Information of the other Party, but which (1) that Party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that Party; (3) is subsequently furnished rightfully to that Party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law; provided that the disclosing Party shall exercise reasonable efforts to notify the other Party prior to disclosure.
- (6) Contractor shall notify the City if Contractor: (i) permits any person to review or gives to any person any document, photograph, tangible thing, or work product referred to in this Agreement if such person has not been authorized by the City in writing to review or receive such document, photograph, tangible thing, or work product; or (ii) receives a request for inspection, a request for production, a subpoena, a court summons, or a court order relating to any document, photograph, tangible thing, or work product referred to in this Agreement.

(b) Know-How. Notwithstanding anything to the contrary herein, each Party and its respective personnel and contractors shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any Confidential Information of the other Party.

(c) Remedies. The Parties agree that if either of them, their officers, employees or anyone obtaining access to the Confidential Information of the other Party by, through or under them, breaches any provision of this, the non-breaching Party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching Party, its officers or employees directly or indirectly realize or may realize as a result of or arising out of, or in connection with any such breach. In addition to, and not in limitation of the foregoing, in the event of any breach of this Section, the Parties agree that the non-breaching Party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching Party arising from a violation of this Section would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the Parties agree that the non-breaching Party shall be entitled to temporary and permanent injunctive relief against the breaching Party, its officers or employees and

such other rights and remedies to which the non-breaching Party may be entitled to at law, in equity or under this Agreement for any violation of this Section. The provisions of this Section shall survive the expiration or termination of this Agreement for any reason.

16. Representations and Warranties.

(a) **Authority.** Contractor represents and warrants that: (1) Contractor has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (2) the execution of this Agreement by Contractor, and the performance by Contractor of its obligations and duties hereunder, do not and will not violate any agreement to which Contractor is a party or by which it is otherwise bound under any applicable law, rule or regulation; (3) when executed and delivered by Contractor, this Agreement will constitute the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms; (4) neither Contractor nor any director, employee or agent of Contractor or its Subcontractors or contractors shall, without prior written notification thereof to City, enter into any business relationship with any employee or agent of City unless such person is acting for and on behalf of City; and (5) Contractor acknowledges that the City makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement.

(b) **Service Warranty.** Contractor warrants that its employees and contractors shall have sufficient skill, knowledge, and training to

perform Services and that the Services shall be performed in a professional and workmanlike manner.

(c) **Personnel.** Unless a specific number of employees are set forth in the Statement of Work, Contractor warrants it will provide sufficient employees to complete the Services within the applicable time frames established in the Statement of Work. During the course of performance of Services, the City may, for any or no reason, request replacement of an employee or a proposed employee. In such event, Contractor shall, within five (5) working days of receipt of such request from the City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies.

(d) **Compensation and Benefits.** Contractor shall provide for and pay the compensation of employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. The City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend and hold the City harmless from and against all such taxes, contributions and benefits and shall comply with all associated governmental regulations, including the filing of all necessary reports and returns.

17. Indemnification.

(a) Contractor Indemnification.

Contractor shall indemnify, defend and hold harmless the City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (“City Indemnitees”) from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable fees and disbursements of legal counsel and accountants), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature (“Indemnifiable Losses”), suffered or incurred by a City Indemnitee directly or indirectly arising from or related to: (1) any negligent or intentional act or omission by Contractor or its representatives in the performance of Contractor’s obligations under this Agreement, or (2) any material breach in a representation, warranty, covenant or obligation of Contractor contained in this Agreement.

(b) Infringement. Contractor shall indemnify, defend, and hold the City harmless from all Indemnifiable Losses arising from any third party claims that any Products or Services supplied by Contractor infringes or misappropriates any Intellectual Property rights of any third party; provided, however, that the foregoing indemnification obligation shall not apply to any alleged infringement or misappropriation based on: (1) use of the Work Product in combination with products or services not provided by Contractor to the extent that such infringement or misappropriation would have been avoided if such

other products or services had not been used; (2) any modification or enhancement to the Work Product made by the City or anyone other than Contractor or its subcontractors; or (3) use of the Work Product other than as permitted under this Agreement.

(c) Indemnification Procedures.

Notwithstanding anything else contained in this Agreement, no obligation to indemnify that is set forth in this Section shall apply unless the City notifies Contractor as soon as practicable to avoid any prejudice in the claim, suit or proceeding of any matters in respect of which the indemnity may apply and of which the City has knowledge. The City shall have the right to participate in any legal proceedings to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys. No settlement or compromise of an asserted third-party claim other than the payment/money may be made without the prior written consent of the City.

(d) Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to the City, its officers, or its employees.

18. Insurance.

(a) Limits: The Contractor shall procure and maintain in force during the term of this Agreement, at its own cost, the following minimum coverages:

(1) Workers' Compensation and Employers' Liability:

State of Colorado: Statutory

(2) General Liability:

(i) General Aggregate Limit:
0 \$2,000,00

(ii) Each Occurrence Limit:
0 \$1,000,00

(3) Automobile Liability:

Bodily Injury & Property Damage Combined Single Limit:¹
0 \$1,000,00

(4) Third Party Fidelity Including Employee Dishonesty While on City Premises:

Each Loss:
0 \$1,000,00

(5) Technology Services Errors and Omissions, Technology Products, Network Security Liability and Privacy Liability.

(i) Per Loss:
\$3,000,000

(ii) Aggregate:
\$3,000,000

(b) **Coverage.** Insurance required by this Agreement shall:

- (1) Be primary coverage;
- (2) Include the City its officials and employees as additional insureds as their interest may appear

(except for Worker's Compensation and Professional Liability). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability;

(3) Include a waiver of subrogation for General Liability coverage.

(4) Be issued from a company licensed to do business in Colorado having an AM Best rating of at least A-VI; and

(5) Be procured and maintained in full force and effect for duration of work.

(c) **Certificates.** Certificates of Insurance shall be forwarded to the City's Purchasing department.

(d) **Cancelation.** Within seven days after receiving insurer's notice of cancellation or reduction in coverage, Contractor, or its insurance broker, shall notify the City. In either such case, Contractor shall promptly obtain and submit proof of substitute insurance complying with the City's insurance requirements.

19. **TABOR.** Contractor understand and acknowledges that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment

¹ Applicable only if Contractor, its agents, employees, or representatives will be using motor vehicles in Colorado while performing the Services.

obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

20. **Relationship of Parties.** Contractor is acting only as an independent contractor and does not undertake by this Agreement to perform any obligation of the City, whether regulatory or contractual, or to assume any responsibility for the City's business or operations. Neither Party shall act or represent itself, directly or by implication, as an agent of the other.
21. **Complete Agreement.** This Agreement contains the entire agreement between the Parties with respect to the matters covered herein.
22. **Time of Performance.** Time is expressly made of the essence with respect to each and every term and provision of this Agreement.
23. **Applicable Law.** Contractor shall comply with all applicable laws in performing the Services. This Agreement shall be construed in accordance with the laws of the State of Colorado. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the Boulder County District Court and each Party consents to jurisdiction and venue before such courts.
24. **Scope of Agreement.** If the scope of any provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the Parties consent to and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.
25. **Notices.** Any notice provided pursuant to this Agreement shall be in writing to the Parties at the addresses set forth below and shall be deemed given (i) if by hand delivery, upon receipt thereof, (ii) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested; or (iii) one (1) day after deposit with a nationally-recognized overnight courier, specifying overnight priority delivery. Either Party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other Party hereto.
26. **Assignment.** This Agreement may not be assigned by Contractor without the prior written consent of the City. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties.
27. **Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties and shall not confer any rights upon any person or entity not a party to this Agreement.
28. **Headings.** The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The recitals set forth on the first page of this Agreement are incorporated into the body of this Agreement. The schedules and exhibits

referred to throughout this Agreement are incorporated into this Agreement.

29. Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

30. Media Releases. Except for any announcement intended solely for internal distribution by Contractor or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Contractor, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Contractor or its employees or agents relating to this Agreement or its subject matter, or including the name, trademark, or symbol of the City, shall be coordinated with and approved in writing by the City, at the City's sole discretion, prior to the release thereof. Contractor shall not represent directly or indirectly that any Services provided by Contractor to the City has been approved or endorsed by the City or include the name, trade mark, or symbol of the City on a list of Contractor's

customers without the City's express written consent.

31. No Requirements Contract. It is expressly understood and agreed that this Agreement does not grant to Contractor an exclusive right to provide to the City any or all of the Services and shall not prevent the City from acquiring from other suppliers services similar to the Services. Contractor agrees that acquisitions by the City pursuant to this Agreement shall neither restrict the right of the City to cease acquiring nor require the City to continue any level of such acquisitions. Estimates or forecasts furnished by the City to Contractor prior to or during the term of this Agreement shall not constitute commitments.

32. Amendment. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties. Neither the course of conduct between the parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein.

33. Survival. Any and all provisions of this Agreement which, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement.

IN WITNESS WHEREOF, the Parties to this Agreement have caused it to be executed by their authorized officers as of the day and year first above written. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CONTRACTOR

By: _____

Title: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me, a notary public, this _____ day of _____, 20____, by _____, as _____.

Witness my hand and official seal.

My commission expires:

(SEAL)

Notary Public

CITY OF BOULDER

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SCHEDULE A - STATEMENT OF WORK

1. GENERAL

This Statement of Work is referenced in and incorporated into to the **Professional Services Agreement** between [X Corporation, Inc.], a [state of incorporation] [corporate form] (“Contractor”) and the City of Boulder, a Colorado home rule municipality (the “City”), dated _____, 20__ (the “Agreement”).

2. SUMMARY OF PURPOSE

The purpose of the Agreement is to define the terms and conditions pursuant to which Contractor will _____.

3. DEFINITIONS

[NOTE: use the first sentence if there are additional words defined in the SOW. If there are no additional definitions, strike both this NOTE and the first sentence.] As used in this Statement of Work, the following words and phrases shall have the meaning given in this Section. Words not defined in this Section shall be given the meaning assigned to them in the General Terms, or if undefined in the General Terms, their common and ordinary meaning. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive.

A. [Applicable?]

B. [Applicable?]

4. NOTICES

Any notice provided pursuant to this Agreement shall be in writing to the Parties at the following addresses:

If to Contractor:

*
*
*

If to the City:

*
*
*

5. EQUIPMENT AND PROGRAMMING TO BE PROVIDED BY THE CITY

A. _____.

B. _____.

6. OTHER CONTRACTOR RESOURCES

A. _____.

B. _____.

7. DESCRIPTION OF WORK PRODUCT; DELIVERABLES; TASKS

*

8. SPECIFICATIONS

[Describe]

9. AMENDMENTS TO THE GENERAL TERMS OR OTHER SPECIAL TERMS, IF ANY

10. PAYMENT TERMS AND CONDITIONS; OUT OF POCKET EXPENSES; MODE OF PAYMENT

A. Payment Terms and Conditions. The City shall pay Contractor for the Services [insert deal points re: payment]. The City will pay Contractor for the Services in accordance with the Payment Schedule. All payments to Contractor are contingent on Contractor's satisfying the Deliverables/Milestones set forth in the Payment Schedule. Payment for all custom design work will be due upon the City's completion of the Functional Acceptance Documentation.

B. Out of Pocket Expenses. Contractor's charge for the Services includes all out-of-pocket expenses, with the exception of travel expenses. Travel arrangements will be made by Contractor, but only City pre-approved travel expenses will be reimbursed.

C. Method of Payment. The City shall pay by check payable to Contractor, except in those instances where the City and Contractor mutually agree that payment will be by credit card.

11. PAYMENT SCHEDULE

The City shall pay Contractor in accordance with the following payment schedule based on the Purchase Price.

All payments to Contractor are contingent on the milestone in the chart below being satisfied. Payments shall be made upon the City's written confirmation to Contractor that the milestone has been satisfied. The Contractor shall provide invoices for deliverables completed, plus any pre-approved reimbursable expenses. Invoices that

include charges for reimbursable expenses shall include a detailed description of the expense. Since this project is to be performed remotely, no out-of-pocket expenses are anticipated at this time. All reimbursable, out-of-pocket expenditures by Contractor must be pre-approved by the City.

	Milestone	Payment Amount
1		\$
2		\$
3		\$

12. SCHEDULE OF DELIVERABLES/TASKS

This schedule sets target dates and for the preparation and delivery of the deliverables by Contractor.

Deliverable/Task	Responsible Party	Target Date
1.		
2.		
3.		

13. ACCEPTANCE AND TESTING PROCEDURES

*

14. LOCATION OF WORK FACILITIES

*

*

*

The City shall provide City office space and support, as it agrees may be appropriate, at its Boulder facility.

**EXHIBIT 1
(If Applicable)**

