



**CITY OF BOULDER, COLORADO**

**REQUEST FOR PROPOSALS**

**Request for Proposals for the Substance Education  
and Awareness Program Evaluation**



**Human  
Services**

**ISSUE DATE: August 1, 2016**

**DUE DATE: 4:30 PM, August 26, 2016**

**CONTACT:**

**Kammi Siemens**

**303-441-3344**

**[siemensk@bouldercolorado.gov](mailto:siemensk@bouldercolorado.gov)**

## Table of Contents

ADVERTISEMENT.....	1
<b>PART 1: GENERAL RFP INFORMATION .....</b>	<b>2</b>
BACKGROUND.....	2
BASE PROPOSAL .....	5
PROCUREMENT SCHEDULE.....	6
PROJECT CONTACT INFORMATION.....	6
SELECTION PROCESS AND EVALUATION CRITERIA.....	7
<b>PART 2: REQUIRED PROPOSAL RESPONSE .....</b>	<b>7</b>
PROPOSAL MATERIALS AND CONTENT.....	7
FINANCIAL/PRICING PROPOSAL.....	7
FORM 1: ACCEPTANCE OF TERMS AND CONDITIONS .....	10
<b>APPENDIX A .....</b>	<b>11</b>
CITY OF BOULDER CONSULTING CONTRACT BOILERPLATE....	11

**CITY OF BOULDER, COLORADO  
REQUEST FOR PROPOSAL  
CONSULTING/PROFESSIONALS SERVICES**

**Substance Education and Awareness (SEA) Program Evaluation**

Issue Date: August 1, 2016

The City of Boulder Human Services Department is seeking proposals from individuals, firms, teams or consultants, hereafter called "consultant(s)," to provide the following professional services: 1) design, develop, and conduct an evaluation of the SEA program that includes the collection of data on both individual and joint efforts of SEA grantees; 2) assess the efforts of funded projects to determine the impact of funds; and 3) develop lessons learned to inform future efforts. Preference will be given to proposals that include both qualitative and quantitative data collection methods, as well as both process and outcome measures.

In accordance with the specifications of the RFP, proposals will be received by the Community Funding Manager until **4:30 P.M. Mountain Time, August 26, 2016**. Late proposals will not be considered.

A copy of the Request for Proposal (RFP) may be obtained from the city's web site at: <https://bouldercolorado.gov/human-services-plan/human-services-fund>

Proposals shall be submitted to:

Name: Community Funding Program Manager  
Kammi Siemens  
Address: City of Boulder Human Services  
P.O. Box 791  
909 Arapahoe Avenue  
Boulder, Colorado 80306  
Telephone: 303.441.3344  
E-mail: [Siemensk@bouldercolorado.gov](mailto:Siemensk@bouldercolorado.gov)

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.

# PART I: General RFP Information

## BACKGROUND-

### *Recreational Marijuana Taxes and Intended Use*

On Nov. 5, 2013, City of Boulder voters approved Ordinance 7916, which authorized the city to impose an excise tax of up to 10 percent and a sales and use tax of up to 10 percent on recreational marijuana sales to offset some of the indirect costs of recreational marijuana.

On Nov. 17, 2015, City Council approved a motion to authorize the city manager to release an RFP for integrated substance abuse prevention education programs; including all commonly abused substances in addition to recreational marijuana, aimed at children, youth and families. The intent is to develop consistent and comprehensive substance abuse prevention education and messaging across the community and with key community stakeholders and organizations.

The city released the SEA RFP on Feb. 9, 2016, inviting community coalitions and organizations to submit proposals to develop and implement the program.

### Desired SEA Program Outcomes

As identified in the RFP the goals and outcomes desired are:

#### Goals

- Widespread community distribution and awareness of information and programs developed;
- Shift community perceptions of risk associated with substance use, including the impact of drugs, alcohol, recreational marijuana, and abuse of prescription medications on children and youth;
- Prevent/reduce youth abuse of alcohol and recreational drugs including marijuana; and
- Reduce accidental ingestion of marijuana and other drugs.

### Leveraging Existing Community Efforts, Consistent Community-wide Messaging

- Program should be integrated with, and complementary to, existing youth substance abuse education and prevention efforts in the community.
- Preference for a partnership approach - multiple partners applying an integrated, collaborative model to achieve community goals, and/or leverage other sources of funding to achieve goals.
- Program should have broad community impact with consistent messaging.

### Target Populations and Program Focus

- The project scope may be broader than the City of Boulder, but SEA funding is intended for the benefit of city residents.
- Education program(s) should be community-wide, and include plans to reach higher risk youth subpopulations that typically report lower perceptions of marijuana or other substance abuse risk and higher rates of use.

- Focus of program activities should be education and prevention. Although funding is not intended for treatment, some treatment activities may be considered as part of a comprehensive education and prevention program.
- Program should operate within broader context of substance abuse, and include significant efforts in the area of children and youth.
- Program should reflect best practices in substance abuse prevention and education for youth.
- Proposed programs should demonstrate involvement of target population in program design.

The SEA program contract was awarded to the Healthy Futures Coalition (HFC) as the program which best matches the goals, purpose and criteria of the RFP. The City of Boulder is seeking proposals to design, develop, and conduct an evaluation of HFC and their SEA coalition partners that includes both process and outcome measures.

The HFC and coalition partners have agreed to report on the demographic and geographic reach of programs and campaigns, as well as annual metrics that demonstrate changes in knowledge, skills, attitudes or behavior of program participants. HFC will work with Boulder County Public Health (BCPH) to obtain data on accidental ingestion of substances through local health care systems or state data repositories. HFC will report on overall population data related to substance abuse through the Healthy Kids Colorado Survey and has also contractually agreed to participate in the independent evaluation process.

The messaging and programs of HFC are unified by a common framework of effective prevention strategies developed by Substance Abuse and Mental Health Services Administration (SAMHSA). This framework establishes complementary programming with consistent messaging through:

- Information Dissemination – Provides information about the nature and extent of alcohol and other drug use, abuse, addiction and their effects on individuals, families and communities. Provides knowledge and increases awareness of available prevention and treatment programs and services.
- Education – Builds skills through structured learning processes. Critical life and social skills include decision making, peer resistance, coping with stress, problem solving, interpersonal communication and systematic and judgmental capabilities.
- Alternatives – Provides opportunities for target populations to participate in activities that exclude alcohol and other drugs.
- Community-Based Process – Provides ongoing networking activities and technical assistance to community groups or agencies.

The HFC will implement these complementary and unified strategies through:

- A media campaign about safe storage of marijuana and other substances, implemented through various media and venues;

- Education/skill building for youth, parents and other influential adults implemented in multiple middle schools through evidence-based and promising programs identified by SAMHSA including: Sources of Strength, Teen Outreach Program (TOP) and Effekt;
- Break the Cycle, a peer-based group intervention to prevent initiation of injection drug use;
- Alternative pro-social activities and middle school service learning program; and
- Substance Abuse Prevention Skills Training (SAPST) for all program subcontractors to reinforce consistent messaging and methods, and technical assistance to subcontractors on coordination and effective service implementation.

The funds awarded to HFC will be subcontracted to certain HFC member organizations in order to increase impact. The following programs will be funded in the first year:

**Chart 1: Subcontractor Scope and Budget**

SUBCONTRACTOR	SCOPE
Boulder County Public Health – Communications and Marketing Unit	Design or procurement and implementation of a safe storage campaign for all substances, designed to reach adults and retailers
Boulder County Public Health – Communicable Disease Program	Break the Cycle peer-based group intervention to prevent initiation of injection drug use
Boulder County Public Health – Community Substance Abuse Program	Coordination of SAPST technical assistance to subcontractors, evaluation liaison, and grant management
Alternatives for Youth	Implementation of <i>Effekt</i> program in two middle schools
BVSD	Sources of Strength program implementation in five middle schools
El Centro Amistad	Expansion of TOP curriculum and health promotion activities with Latino youth in one middle school
YMCA of Boulder Valley	Training in substance abuse prevention and positive youth development for all YMCA staff, coaches and volunteers First Friday social activities for youth, and service learning projects for middle school youth
Phoenix Multisport	Physical activity for youth at risk of substance abuse

## BASE PROPOSAL-

### PROJECT SCOPE

#### Requested Services and Deliverables

This RFP is for a contract of limited duration, commencing on the effective date written above, and terminating on September 30, 2017. An annual renewal is possible at the option of the City for future years. For the purposes of this RFP, the City plans for the professional services agreement to terminate at the time of the final report's acceptance at the end of Year One; however, the City may wish to extend the contract for additional years.

The City requests the consultant(s) propose an approach that will best address the goals of the project based on their expertise and proven practices. The successful consultant(s) will provide services including but not limited to:

1. Development of a **high-level work plan** for Year One, including a specific timeline and goals.

*Deliverable 1: Written work plan outline in Word format.*

2. Development of a **comprehensive evaluation plan** to measure HFC progress toward key City goals for SEA program, as listed above. The plan should include:
  - a. Examination and development of measurement tools and a core set of common measures, if possible;
  - b. Development of protocols to collect and manage data;
  - c. Having a mechanism to store and manage data; and
  - d. Having the ability to analyze data both quantitatively and qualitatively.

*Deliverable 2: Written description of the evaluation plan including methodology, plan for sampling the population, and/or all other tools that will be utilized to achieve project objectives.*

3. Delivery of **project services**, to include:
  - a. Holding a kick-off meeting in person at the initiation of the contract period with City, Boulder County and HFC staff.
  - b. Implementing an evaluation plan collaboratively with City staff, HFC and its subcontractors, including regular quarterly meetings with the team.

*Deliverable 3: Brief monthly updates as part of monthly invoicing – format provided by the City.*

#### 4. Final Reporting

- a. Presenting an annual update and findings in person to the City of Boulder and other stakeholders in a group setting.
- b. Providing two thumb drives containing all data collected as part of the evaluation.

- c. Providing a written annual summary report including recommendations for evaluation or program adjustments.

*Deliverable 4: Provide one example of an actual report or work product that you have performed for services similar to those required in this RFP.*

- 5. In the instance of a contract extension beyond Year One, additional deliverables will include:
  - a. *Providing two thumb drives annually containing all data collected as part of the evaluation,*
  - b. *An annual written 5-7 page evaluation summary report in Word format, and*
  - c. *A final written summary report at the end of year five.*

**PROCUREMENT SCHEDULE-**

**Tentative Selection Schedule – TBD**

RFP Issued .....	August 1, 2016
Proposal Responses Due .....	August 26, 2016
Contractor Selection.....	mid September, 2016
Contractor Negotiations Complete .....	late September, 2016
Report Due.....	August 31, 2017

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

**PROJECT CONTACT INFORMATION-**

Upon release of this RFP, all consultant(s) communications concerning the overall RFP should be directed to the Community Funding Manager listed below.

Name: Community Funding Manager  
 Kammi Siemens  
 Address: City of Boulder Human Services  
 P.O. Box 791  
 909 Arapahoe Avenue  
 Boulder, Colorado 80306  
 Telephone: 303.441.3344  
 E-mail: siemensk@bouldercolorado.gov

## **SELECTION PROCESS AND EVALUATION CRITERIA-**

The RFP coordinator and other City staff will evaluate the submitted proposals. The review team will consider how well the consultant's qualifications, proposed methodology and costs meet the needs of the City as described in this document. The evaluation process is not designed to award the contract to the lowest cost consultant(s) as the sole criteria; rather, it is intended to help the City select the consultant(s) with the best combination of attributes, including cost, based on the evaluation factors. The City reserves the right to require that finalists participate in an interview and conduct a presentation to a selection team.

The following criteria will be applied in selecting a successful bid:

- Knowledge of Evidence Based Practice literature in the substance abuse prevention arena, particularly in the area of youth substance abuse prevention;
- Technical knowledge and experience (e.g. ability to develop measurement and collection protocols and tools and analyze program data);
- Strength of the proposed evaluation methodology, including both quantitative and qualitative statistical analysis related to the evaluation of substance education and awareness programs;
- Demonstrated experience working within a collaborative environment to develop and implement evaluation efforts within and across diverse grantees;
- Demonstrated experience presenting to groups on evaluation findings;
- Cost (e.g., contract requirements and objections);
- Business references and reputation; and
- Any other relevant and appropriate factors.

## **PART II: Required Proposal Responses**

### **PROPOSAL MATERIAL AND CONTENT-**

The complete proposal shall include the scope of work as identified in the criteria set forth in the project scope, including a point-by-point response and all other materials requested in the RFP. Proposals may include any additional materials which would assist in the evaluation of the proposal. However, each section outlined below shall be responded to completely. References to other documents shall not be accepted.

The City requests joint ability to adjust the expenditures of the contract project management hours in a manner that meets project needs at various stages of the project, rather than requiring full-time resource commitment throughout the project. As such, the City is open to a contractual arrangement that allows the successful entity to engage in other business endeavors as long as the legal and performance requirements of the Professional Services Agreement between both parties is enforced at all times and conflicts of interest are avoided.

**Content of the Proposal:** Proposals should be prepared simply and economically, providing a straightforward, concise description of the consultant's ability to perform the following requirements of this RFP:

1. **Knowledge, Qualifications, and Expertise of the Individual(s) or entity:** Please provide a brief history and overview of your firm and its organizational structure, or if an individual, a description of your qualifications with special emphasis on your understanding of the services required and how you propose to fulfill the needs of the City, including the following information:
  - a. Name, address, e-mail address, telephone, and website of the consultant.
  - b. Type of organization (individual, partnership, corporation, or other). Please include Federal Tax ID (FEIN).
  - c. Principals of your firm (as applicable).
  - d. State why you are well-qualified to provide the City with services outlined in the "Requested Services and Deliverables" section above. This must include the size of the organization, list of the staff qualified to provide these services, and the location of the coordinating office.
  - e. Provide specific descriptions of the experience of the consultant(s) in providing these services to clients similar to the City of Boulder Department of Human Services.
  - f. Provide three (3) references from other clients to which the consultant(s) has provided services similar to those outlined in this RFP. Include names, addresses, and phone numbers, a thorough description of project scope and deliverables, and dates of the service. Contacts shall be those who have personal knowledge of your consultant's performance for this requirement.
  
2. **Qualifications and Experience of Proposed Project Manager and Project Staff Assigned by the entity:** Please identify the individual staff members who will be assigned to provide the overall management of the professional services outlined in the RFP, including:
  - i. Identify and provide the resume of the individual(s) who will be assigned to provide these contracted services and include whether the proposed project staff person is an employee of the organization or a subcontractor.
  - ii. Identify the role of each proposed staff member on the project and their estimated level of time allocated to the project.
  
3. **Technical Approach to Service Provision:** Please provide a description of the consultant's approach to this project to include:
  - a. A written explanation detailing how the assigned individual will approach the provision of the services outlined in this RFP to include:
    - i. The management of time, resources, and staff to accomplish goals including a detailed timeline.
    - ii. Designing, implementing and managing the evaluation plan.
    - iii. Developing recommendations related to policies and procedures.
    - iv. Financial matters including project budgeting, invoicing and accounting.

- b. Provide one example of an actual report or work product that you have performed for services similar to those required in this RFP.
4. **Methods:** Please provide a description of the consultant’s approach to this project to include:
- a. Your approach to working with City staff, HFC and its subcontractors;
  - b. Your plan and timeline to meet the goals of the project;
  - c. How you will develop or use evaluation tools;
  - d. Your approach to group presentations on findings and/or progress made to date;
  - e. How data will be collected, organized, and managed; and
  - f. Your approach to analysis and reports.

## **FINANCIAL/PRICING PROPOSAL-**

It is the intent of the City to purchase these services for a specific time period at a firm fixed price. The Consultant(s) will be engaged as an independent contractor (see Agreement for Consulting Services, Appendix A) and will be responsible for all benefits, taxes, and insurance or other requirements. Unless services are subsequently agreed upon in writing, the total amount paid by the City to the Consultants pursuant to this agreement for Year One shall not exceed the sum of \$45,000. In the event of contract extension for additional years, the total fixed price sum may vary contingent upon City Council approval of funding.

## FORM 1: ACCEPTANCE OF TERMS AND CONDITIONS

[Use this form to indicate exceptions that your firm takes to any terms and conditions listed in the Professional Services Boilerplate attached to this RFP, as well as the RFP itself. Proposals which take exception to the specifications, terms, or conditions of this RFP or offer substitutions shall explicitly state the exception(s), reasons(s) therefore, and language substitute(s) (if any) in this section of the proposal response. Failure to take exception(s) shall mean that the proposer accepts the conditions, terms, and specifications of the RFP.

If your firm takes no exception to the specifications, terms, and conditions of this RFP, please indicate so.

List exceptions here:

Signed,

By: \_\_\_\_\_

\_\_\_\_\_  
Title Date

For: \_\_\_\_\_

## APPENDIX A-

### CITY OF BOULDER CONSULTING SERVICES BOILERPLATE AGREEMENT

#### AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made effective this \_\_\_\_ day of \_\_, 20\_\_ by and between the City of Boulder, Colorado, a Colorado home rule city (“the City”), and \_\_\_\_\_, [Insert Legal Name] a \_\_\_\_\_ [Insert state of organization] \_\_\_\_\_ [Insert Form of Entity-- such as Corporation, or Limited Liability Company] (the “Consultants”).

#### RECITALS

A. City desires that Consultants provide certain consulting services, project management services and such other related services as described in the Scope of Work (the “Project”).

B. The Consultants provide professional consulting services to the public and are fully qualified to perform the consulting services needed by the City in connection with the Project and desire to perform such consulting services on the terms and conditions set forth in this Agreement.

#### COVENANTS AND CONDITIONS

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

##### 1. SCOPE OF SERVICES.

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

B. Specific Duties and Responsibilities. In connection with the Project, the Consultants shall undertake the duties and responsibilities and provide the services described in the attached Appendix A, captioned “Scope of Work,” which is made a part of this Agreement.

C. Extra Services. Upon the express, written request of the City, the Consultants shall perform services beyond the scope of the duties and responsibilities described in the Scope of Work. The Consultants shall charge the City for such extra services, if any, in accordance with the provisions of Subsection 4.B.

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

2. COOPERATION BY THE CITY. The City will thoroughly and as expeditiously as reasonably possible consider all reports, sketches, drawings, specifications, proposals, and other documents prepared by the Consultants, and it shall inform the Consultants of all decisions that it has made which would affect the Consultants’

work under this Agreement as soon as reasonably feasible. The City will inform the Consultants of any pending change or revision to the Project as soon as reasonably feasible. The City will provide the Consultants with current, updated plans, if any, for the Project as soon as reasonably feasible after they are produced.

3. TERM AND SCHEDULE. The term of this Agreement shall commence on the effective date, written above, and shall terminate on \_\_\_\_\_. A detailed project schedule is presented on the attached Appendix A. However, it is understood by the parties that the actual schedule may differ from what is anticipated. The City shall advise the Consultants in writing of each change in the schedule as soon as feasible after it becomes aware thereof, and the Consultants shall adjust the timing of their services so as to comply with the revised schedule. The Consultants shall provide their services at such times as are necessary in order to promote the smooth progress of the Project.

4. AMOUNT OF PAYMENTS TO CONSULTANTS.

A. Aggregate Limits. Unless services in addition to those specified in Section 1 are subsequently agreed upon in writing, the total amount paid by the City to the Consultants pursuant to this Agreement shall not exceed the sum of \$\_\_\_\_\_.

B. Specific Charges. The compensation and expenses for the services rendered under this Agreement shall be calculated using the actual time required by Consultants and its staff to perform the services. The Consultants billing rates are set forth on the attached Appendix B, which is made a part of this Agreement.

- i. Direct expenses incurred by the Consultants in connection with the Project shall be charged to the City on the basis of the direct expenses actually incurred by the Consultants, without any additional surcharge added by the Consultants. The City shall not pay for the expense of Consultants' vehicles, except for mileage reimbursement which will be paid at the current standard mileage reimbursement rate established by the IRS.
- ii. Consultants may be reimbursed for actual costs incurred for necessary project-related travel expenses with the following limitations: potentially reimbursable air travel will be only by commercial carrier at the lowest available fare appropriate to the needs of the mission and be related to and in furtherance of the purposes of Consultant's engagement. Vehicle rental costs shall be reimbursed only when efficiency and economy are served by incurring such rental expenses. Use of rented vehicles for personal travel shall not be reimbursed. Sleeping accommodation costs, if reimbursed, are limited to a reasonable amount, taking into account costs of alternate facilities in the location and other relevant factors. The City may pay Consultants a flat per diem amount per day for meals and incidental expenses while traveling on City business. These per diems are based on U.S. General Services Administration per diems by location, which are updated annually. Other travel-related costs (such as airfare, hotel, taxis, and parking) will be reimbursed with receipts.

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

5. TIME OF PAYMENTS TO CONSULTANTS. Consultants shall bill the City directly for services rendered by Consultants at the rates set out in Appendix B. Consultants shall bill the City monthly and provide an invoice within 30 days of the close of each billing period. The invoice shall include: (i) a description of the services rendered in sufficient detail to permit the City to understand the nature of the service; (ii) the aggregate number of hours performed on the matter during the billing period; (iii) an itemization of direct expenses for each task; and (iv) the aggregate fee for the matter in the billing period. The City shall pay within thirty (30) days following the acceptance by the City of the services.

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

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

- ii. Any part of such payment is attributable to services which are not performed according to this Agreement. (The City will pay for any part thereof attributable to services performed according to this Agreement).
- iii. The Consultants have failed to make payments promptly to any third parties used in the services for which the City has made payment to the Consultants.
- iv. The City, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Project or any task according to this Agreement. In such case, no additional payments will be due to the Consultants until the Consultants, at their sole cost, perform a sufficient portion of the Project or task so that the City determines that the compensation then remaining unpaid is sufficient to complete the Project or task.
- v. No partial payment shall be final acceptance or approval of that part of the Project or task paid for, or shall relieve the Consultants of any of their obligations under this Agreement.

7. CONSULTANTS' DUTIES.

A. Abilities, Qualifications, Experience, and Best Efforts. Consultants shall perform the Services in a timely and professional manner consistent with the requirements set forth in the Scope of Work, and in accordance with industry best practices. Consultants agree to utilize its expertise and creative talents in completing the services.

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

C. Subcontractors. Consultants shall be permitted to subcontract the performance of certain services to a third party (a "subcontractor") provided, that the Consultants give prior notice to the City of the subcontractor, outlining the nature and scope of the services to be subcontracted and that the City consents to the subcontracting of such services to such subcontractor. Consultants shall remain responsible to the City in accordance with this Agreement for consulting services performed by any subcontractor. Under no circumstances (including, without limitation, Consultants' failure to make timely and full payments to a subcontractor) shall the City be liable to any subcontractor for payment of any amounts.

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

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

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

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

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

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

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

H. Books and Records. The Consultants shall keep their books and records for the Project and reimbursable expenses according to recognized accounting principles and practices, consistently applied. The Consultants shall make them available for the City's inspection at all reasonable times. The Consultants shall retain such books and records for at least three years after completion of the Project.

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

8. CONFIDENTIAL INFORMATION. Consultants may receive or have access to data or information from the City and information that the City may have access to from Boulder County. Such data or information, because of applicable law or other obligations with third parties, may be: (i) required to be kept confidential; (ii) not required to be disclosed; or (iii) not a public record under the Colorado Open Records Act ("Confidential Information"). Consultants agree to hold and not disclose any Confidential Information to any person not having a legitimate, need-to-know purpose authorized by the City.

Consultants agree to protect all Confidential Information with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

Consultants agree to immediately notify the City 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.

Notwithstanding the foregoing, nothing in this Agreement shall restrict the Consultants with respect to information or data identical or similar to that contained in the Confidential Information of the City but which: (i) that party rightfully possessed before it received such information from the City as evidenced by written documentation; (ii) subsequently becomes publicly available through no fault of the Consultants; (iii) is subsequently furnished rightfully to the Consultants by a third party without restrictions on use or disclosure; or (iv) is required to be disclosed by law, provided that the Consultants will exercise reasonable efforts to notify the City prior to disclosure.

## 9. TERMINATION.

A. Termination for 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.

B. Termination for Convenience. In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving the Consultants written notice at least fourteen days in advance of the termination date. In the event of such termination, the Consultants will be paid for

all services rendered to the date of termination, except as set forth in Section 6, above, and upon such payment, all obligations of the City to the Consultants under this Agreement shall cease.

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

D. Return of Property. Upon termination of this Agreement, the Consultants shall promptly deliver to the City all City data, which includes any data or information of the City that is provided to or obtained by Consultants 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 as well as any plans, photographic images, analyses, test, maps, surveys, and written materials of any kind generated in the performance of their services under this Agreement up to and including the date of termination.

10. LAWS TO BE OBSERVED. The Consultants shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction over the same, and shall defend, at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall indemnify and hold harmless the City against any claim or liability to the extent caused by the intentional or negligent violation of any such law, ordinance, regulation, order, or decree, whether by itself, its subcontractors, agents, or employees.

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

12. NO MULTIPLE FISCAL YEAR OBLIGATION. Nothing in this Agreement shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the City's obligations under this Agreement are subject to annual appropriation by the City Council of the City. Any failure of a City Council annually to appropriate adequate monies to finance the City's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the Consultants of any failure to appropriate such adequate monies.

13. INDEPENDENT CONTRACTOR. The relationship between the Consultants and the City is that of an independent contractor. The Consultants shall supply all personnel, equipment, materials and supplies at their own expense, except as specifically set forth in this Agreement. The Consultants shall not be deemed to be, nor shall they represent themselves as, employees, partners, or joint venturers of the City. No employee or officer of the City shall supervise the Consultants. **The Consultants are not entitled to workers' compensation benefits and are obligated to directly pay federal and state income tax on money earned under this Agreement.**

14. INDEMNIFICATION

A. Consultants' Indemnification. Consultants shall indemnify and hold harmless the City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable attorneys' fees and costs of defense), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature suffered or incurred by the City directly or indirectly arising from or related to: (i) any negligent or intentional act or omission by Consultants or its representatives in the performance of Consultants' obligations under this Agreement, or (ii) any material breach in a representation, warranty, covenant or obligation of Consultants contained in this Agreement. Consultants are not obligated to indemnify the City in any manner whatsoever for the City's own negligence. The Consultants' obligation to indemnify the City as set forth in this Agreement shall survive the termination or expiration of this Agreement.

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

C. Limitations. If this Agreement is for architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, Consultants' obligation to indemnify or hold harmless the City shall be limited to the amount represented by the degree or percentage of negligence or fault attributable to the Consultants or its agents, representatives, subcontractors or suppliers.

If this Agreement is for architectural, engineering, surveying, or other design services, then the extent of Consultants obligation indemnify or hold harmless may be determined only after its liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between Consultants and 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.

15. INSURANCE. Consultants agree to procure and maintain in force during the term of this Agreement, at its own cost, the following minimum coverages:

- A. Workers' Compensation and Employers' Liability
  - i. State of Colorado: Statutory
  
- B. General Liability
  - i. General Aggregate Limit: \$2,000,000
  - ii. Per Occurrence: \$1,000,000

Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

- C. Automobile Liability Limits<sup>1</sup>
  - i. Bodily Injury & Property Damage Combined Single Limit: \$1,000,000

Coverage provided should be at least as broad as found in ISO form CA0001 (BAP) including coverage for owned, non-owned and hired autos.

- D. Professional Liability (errors and omissions)<sup>2</sup>
  - i. Each Claim/Loss: \$1,000,000
  - ii. Aggregate: \$1,000,000

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

- E. Insurance shall:
  - i. Provide primary coverage;
  - ii. Include the City of Boulder and 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;
  - iii. Include a waiver of subrogation for General Liability coverage;

---

<sup>1</sup> Applicable only if Consultants, its agents, employees, or representatives will be using motor vehicles in Colorado while performing work on the Project.

<sup>2</sup> Applicable only to licensed professionals.

- iv. Issue from a company licensed to do business in Colorado having an AM Best rating of at least A-VI; and
- v. Be procured and maintained in full force and effect for duration of work.

F. Certificates of Insurance evidencing the coverages described here, shall be forwarded to Purchasing. Certificate Holder shall be: City of Boulder, 1777 Broadway, Boulder, CO 80306.

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

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

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

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

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

17. INTEGRATION. This document constitutes the entire agreement between the City and the Consultants and incorporates all prior verbal and written communications between the parties concerning the subject matter of this Agreement.

18. NO ASSIGNMENT. This Agreement may not be assigned by Consultants 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.

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

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

21. FORCE MAJURE. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but

not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

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

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

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

[SIGNATURE PAGE TO FOLLOW]

