

CITY OF BOULDER, COLORADO  
REQUEST FOR PROPOSAL

RFP NO. 37-2009  
RECOMMISSIONING PILOT PROGRAM



ISSUE DATE: May 29, 2009

DUE DATE: 12:00 PM, Thursday, September 3, 2009

CONTACT:  
Kevin Afflerbaugh  
[afflerbaughk@bouldercolorado.gov](mailto:afflerbaughk@bouldercolorado.gov)

**CITY OF BOULDER, COLORADO  
NOTICE OF REQUEST FOR PROPOSAL  
RFP # 37-2009  
Recommissioning Pilot Program**

The City of Boulder, Colorado, Purchasing Division and Office of Environmental Affairs invite qualified organizations to submit proposals for the Recommissioning Pilot Program (ReCXPP). Proposals will be received until 12:00 PM, September 3rd, 2009.

Proposals shall be in a sealed envelope, plainly marked "RFP #37-2009, Recommissioning Pilot Program, September 3rd, 2009" and addressed to:

Calder Grey  
City of Boulder  
Purchasing Division  
1777 Broadway  
P.O. Box 791  
Boulder, Colorado 80306-0791

No proposals received after the time mentioned will be considered. Hand carried bids must be delivered to the 1777 Broadway Office. No electronic submissions will be accepted. However, digital materials may be included with the submission.

Bidding documents are available online at:

[www.bouldercolorado.gov/purchasing](http://www.bouldercolorado.gov/purchasing)

City of Boulder, Colorado  
A Municipal Corporation

By \_\_\_\_\_  
For the Director of Finance and Record  
Ex-officio City Clerk

**CITY OF BOULDER, COLORADO**  
**REQUEST FOR PROPOSALS**  
**RFP # 37-2009**  
**Recommissioning Pilot Program**

**Section I. Administrative Information**

- A. ISSUING ENTITY:** This Request for Proposals (RFP) is issued by Office of Purchasing, City of Boulder, P.O. Box 791, Boulder, CO 80306. Telephone: (303) 441-1857. Web site: [www.bouldercolorado.gov/finance](http://www.bouldercolorado.gov/finance)

E-mail: [greyc@bouldercolorado.gov](mailto:greyc@bouldercolorado.gov)

**PURPOSE:** The goal of the Recommissioning Pilot Program (ReCXPP) is to pilot a recommissioning program to help small and medium-sized businesses (less than 50,000 square feet) reduce their energy costs and associated greenhouse gas (GHG) emissions. The ReCXPP will entail conducting recommissioning efforts to help participating businesses implement cost-effective individual measures or bundles of measures to increase the operating and energy/resource efficiency of buildings. The ReCXPP specifically targets buildings less than 50,000 square feet because these buildings do not qualify for recommissioning services from Xcel Energy. Lessons learned from the pilot program will be used to make program refinements for a future full-scale program.

Most building owners assume that the energy systems in their buildings generally function as they were designed to function. However, evidence from field experiences indicates building energy systems that actually function as intended are the rare exception to the rule. Previous studies on the benefits of recommissioning have concluded energy cost savings of 15 percent can be achieved by simply operating equipment in accord with design intent.

Furthermore, building recommissioning services have historically included as least two typical phases. Phase 1 is a commissioning study that identifies opportunities and the associated results (implementation costs, cost savings, and payback). In Phase 2, the actual implementation actions (repairs, installations, etc.) of these opportunities are completed. See Section II, Part A for example opportunities. For buildings less than 50,000 square feet with relatively simple building systems, the ReCXPP seeks to simplify and streamline the commissioning process by:

1. Encouraging implementation actions that are cost-effective immediately at the time of the opportunity identification, and
2. Estimating advance savings estimates for anticipated opportunities.

As such, this RFP is requesting a firm or partnership of firms that can provide both phases of a typical recommissioning effort – namely, the commissioning study AND the implementation of the identified opportunities. The selected firm(s) will assist in both developing this pilot program and implementing the ReCXPP. Program development assistance will include establishing costs for measures and/or bundles of measures. The firm will then help implement the program with a small subset of commercial businesses, evaluate and report the results, and suggest refinements prior to rolling out a full-scale program.

The City of Boulder already has one firm engaged in developing the ReCXPP. Development completed to date with the assistance of this firm includes the following:

1. Preliminary list of typical recommissioning opportunities for targeted building types
2. Estimated savings associated with item 1
3. Program application

The expected results include increased energy efficiency in, and reduced GHG emissions from, Boulder's small commercial buildings. The ReCXPP will help inform a full-scale program that will result in a reduction in GHG emissions as outlined in the city's Climate Action Plan (CAP), as well as increased education, awareness, and action associated with the benefits of recommissioning.

#### **B. REQUESTED SERVICES:**

1. Assist with program development and implementation.
2. Assist with recruitment of businesses for the pilot phase of this program.
3. Conduct recommissioning activities in participating pilot businesses.
  - a. Identify measures and/or bundles of measures.
  - b. Establish cost ranges for potential program measures and/or bundles of measures.
  - c. With building owner agreement, conduct project implementation, scheduling, oversight, and quality control of measures identified.
  - d. Report on results for individual projects (pilot program reporting templates will be provided).
  - e. Trouble-shoot and solve problems.
  - f. Assist with Xcel rebates available for capital purchases where applicable.
4. Work with project team (City of Boulder and currently engaged firm) to author summary report on program benefits, challenges, and suggested refinements for 2010 calendar year.

As introduced in Section I, Part A, note two unique aspects of the requested services:

1. This RFP seeks service providers who are both familiar with re-commissioning studies, as well as directly capable of implementing measures identified in these studies. See Section II, Part A for example measures.
2. In addition to item 1, this RFP seeks responders who are capable of providing input to the recommissioning program development being conducted by the City of Boulder.

**A. SCOPE OF RFP:** This RFP includes instructions for submitting a proposal, describes the criteria by which applicants will be selected, and describes the general services and products provided by the ReCXPP.

**B. SCHEDULE OF ACTIVITIES:**

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

TENTATIVE SELECTION SCHEDULE

RFP Issued .....	August 11, 2009
RFP Questions (if any) Due .....	August 18, 2009
RFP Answers Distributed .....	August 20, 2009
Proposal Responses Due .....	September 3, 2009
Contractor Selected.....	September 9, 2009
Contract Negotiations Complete.....	September 15, 2009

**C. INVITATION TO SUBMIT QUALIFICATIONS:** Interested and qualified individuals, firms, and consultant teams are invited to submit materials in accordance with the RFP. Submitted materials will be reviewed by a selection committee, and a decision on the team selected to enter contract negotiations will be made according to the schedule indicated in the previous section.

**D. INQUIRIES:** Inquiries related to the process of the proposal should be addressed to Calder Grey, Office of Purchasing, (303) 441-1857, [greyc@bouldercolorado.gov](mailto:greyc@bouldercolorado.gov).

Inquiries related to the technical aspects of the proposal and program details should be addressed to Kevin Afflerbaugh, Office of Environmental Affairs, (303) 441-4191, [afflerbaughk@bouldercolorado.gov](mailto:afflerbaughk@bouldercolorado.gov).

**E. SELECTION PROCESS AND EVALUATION CRITERIA:** Proposals should provide complete information regarding qualifications and approach. Proposals should be directed toward recommissioning capabilities and experience in implementing and evaluating related programs for small businesses. The complete scope of work and tasks are identified in Section II.

Consultant should have experience with the following:

- A. Developing recommissioning programs
- B. Recruiting business participants for recommissioning programs
- C. Conducting recommissioning studies and directly implementing opportunities relevant to small- and medium-sized commercial businesses, including:

- a. Functional testing, diagnostics, trending energy calculations, and implementation of improvements
  - b. Building system performance and interaction
  - c. Common installation, maintenance, and operating pitfalls for commissioned systems
  - d. Writing of recommissioning specifications and scopes of work
  - e. Costing of measures
- D. Measuring and verifying recommissioning results
  - E. Working with contractors and vendors
  - F. Training business operating personnel and developing O & M manuals
  - G. Reporting on pilot program effectiveness and recommendations for refinements

A proposal review committee will review and rate each RFP based on the following:

Qualification	Measure
Demonstrated qualifications for addressing issues and scope of work	<ul style="list-style-type: none"> <li>a) Understanding of project</li> <li>b) Approach/methodologies for implementation</li> <li>c) Prior work experience</li> </ul>
Qualifications to perform services	Consulting firm attributes and references
Availability to complete work	Compare with time frame of project and work load
Pricing	Ability to complete scope of work with budget outlined in Section V, 1. Funding.
Flexibility and creativity	Ability to adapt to and address the nature of this pilot project

**F. PROPOSAL SUBMISSION: Proposals must be received on or before 12:00 pm MST, September 3rd, 2009.** Entities must allow sufficient delivery time to ensure receipt of their material by the specified date. Please reference RFP# 37-2009 on submitted materials. Fax or other electronic transmissions of the statement of qualifications will not be accepted. However, digital materials may be included with the submission.

Three (3) copies of the proposals should be printed double-sided on 100% post-consumer recycled content paper with NO plastic covers, bindings, etc., and be mailed to:

Office of Purchasing  
 City of Boulder  
 RFP # 37-2009  
 P.O. Box 791  
 Boulder, CO 80306

Or delivered to:

Municipal Building  
Office of Purchasing  
RFP # 37-2009  
1777 Broadway  
Boulder, CO 80302

- H. REJECTION OF SUBMISSION:** The city reserves the right to reject any or all submissions, to waive informalities and irregularities in submissions received, and to accept any portion of any submission or all items proposed if deemed in the best interest of the city to do so.
- I. PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a submission must be clearly stated in the submission itself. Proprietary information submitted in response to this RFP will be handled in accordance with the Colorado Open Records Act.
- J. RESPONSE MATERIAL OWNERSHIP:** All materials submitted regarding this RFP become the property of the city and only will be returned to the consultant team at the city's option. Responses may be reviewed by any person at the discretion of the city after final selection has been made of a consultant team or entities. Proprietary information will be handled in accordance with the Colorado Open Records Act.
- K. INCURRING COSTS:** The city is not liable for any cost incurred by entities prior to executing a contract purchase order.
- L. OWNERSHIP OF WORK RESULTS:** Any and all products of work performed under contract with the city in both digital and hard copy form is the property of the city and may not be sold or distributed by the vendor without permission.

## Section II. Scope of Work

- A. PROJECT DESCRIPTION:** The goal of the Recommissioning Pilot Program (ReCXPP) is to pilot a recommissioning program to help small and medium-sized commercial businesses (less than 50,000 square feet) reduce their energy costs and associated greenhouse gas (GHG) emissions by conducting recommissioning studies and implementing cost-effective bundles of measures. This RFP is requesting a contractor to implement the ReCXPP, evaluate and report the results of the pilot program, and suggest program refinements for a full-scale program rollout.

Competing priorities, limited time and financial resources, and a lack of information make it difficult for small and medium-sized businesses to realize the full financial advantages of recommissioning their facilities and equipment. In response, the ReCXPP pilot will help a sample of small businesses by providing a streamlined process that incorporates savings estimates and addresses building efficiency actions in parallel to the recommissioning investigation/study. Lessons learned from the pilot program will then be documented and used to make program refinements for a full-scale program.

In terms of specific technologies, the ReCXPP will focus on predetermined individual measures and/or packaged bundles of these measures that collectively have one or more of the following characteristics:

1. Commonality to various building types of the targeted size
2. An acceptable payback period
3. Allow for relatively easier calculation of benefits for range of buildings
4. Understandable and manageable from an owner's perspective

The measures include, but are not limited to, the following:

1. Testing and balancing
2. Building equipment scheduling
3. Economizer repair
4. Furnace tune-ups
5. Domestic hot water heater tune-ups
6. Calibration of lighting occupancy sensors
7. PC power management
8. Calibration of pneumatic sensors and instrumentation
9. Other custom measures

**B. TARGET AUDIENCE:** The target audience for the pilot program is composed of businesses, primarily commercial office space, located in the city of Boulder in buildings between 10,000 and 49,999 square feet.

**C. SERVICES:** Refer to Section I.B. for requested services.

### **Section III. Program Background**

The Boulder City Council passed a resolution in May, 2002 establishing a commitment to reduce community greenhouse gas (GHG) emissions with the initial goal of meeting the Kyoto Protocol target. Council action called for a focus on improving energy efficiency of new and existing buildings and increased use of renewable energy and fuels. Limited energy efficiency programs were launched in 2005, and the Climate Action Plan (CAP) was approved in 2006. Also in 2006, City Council decided to place a CAP tax on the ballot, a charge on electricity use, which was approved by the voters and will provide funds to implement the CAP. The CAP serves as a dynamic planning tool and describes strategies for achieving community-wide GHG reductions. Key details and assumptions of the CAP include the following:

1. The commercial sector emits 58% of the city's GHG emissions.
2. The CAP assumes that significant investment will be made by commercial property owners to improve the energy efficiency of their properties and to increase renewable energy use. Estimated private sector investment needed by 2012 is \$37M. Estimated energy cost savings exceed \$63M.
3. Existing energy efficiency programs are expanding and new programs and services are being designed and launched. These programs are focused on implementing energy efficiency projects.
4. The city needs to identify additional opportunities for reducing GHG emissions from the commercial sector. Recommissioning of existing facilities and

equipment in the city's small commercial business sector offers a potentially significant opportunity for increasing energy efficiency and reducing emissions.

#### **Section IV. Information to be Submitted**

Three (3) complete sets (double-sided printed, 100% post-consumer recycled content paper with NO plastic covers, bindings, etc.) of the following must be provided:

1. A cover letter stating the name, address, and phone number of the team lead.
2. Identification of those that will be involved in the project, their titles, roles, time commitment, hourly rates, and general cost estimates.
3. Resumes outlining related work experience of those who will be involved in the project.
4. An outline of the qualifications of the group to implement a recommissioning pilot program with a range of small businesses, measure and document the effectiveness of the pilot, and suggest program refinements.
5. Identification of any elements of the work that will be subcontracted and the subcontractors who will be employed as a part of the primary team.
6. A description of the proposed management structure of the group.
7. A description of team experience with particular emphasis on relevant similar projects.
8. A description of the team's proposed approach/methodologies of implementation for scope of work.
9. Three (3) professional references for recent and similar services performed by the consultant lead with quantifiable results. Please include a specific contact person and phone number for each reference.
10. Demonstration of ability to complete tasks on time and within budget.
11. Any reservations, conditions, or constraints related to the RFP.

#### **Section V. Project Budget and Administration**

- A. BUDGET:** The anticipated 2009 Budget for this scope of work is estimated to be \$60,000 and requires working with projects in 10-30 buildings to achieve a GHG reduction goal. Note that this budget includes both the pilot program development activities (Section I. B., Items 1 and 3) as well as the recommissioning activities (Section I. B, Item 2). The city of Boulder has a goal in 2009 to achieve 1000 metric tons of CO<sub>2</sub> reduction through this pilot program. The project team (firm selected for this scope of work, firm already engaged, and city of Boulder) will work together to achieve the GHG reduction goals of this pilot program.
- B. ADMINISTRATION:** City of Boulder Office of Environmental Affairs will provide administrative management for the program and the city of Boulder will be the contracting agent for the program.
- C. CONSULTANT SELECTION:** The city will negotiate with the top consultant candidate. If negotiations prove unsuccessful, the candidate will be notified that the negotiations are terminated. Negotiations will then be commenced with the next preference. The negotiating process will be continued until mutually satisfactory arrangements are made.

**Section VI. 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 Contract attached to this RFP, as well as the RFP itself. Proposals that 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: \_\_\_\_\_

**SERVICES CONTRACT**

THIS CONTRACT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF BOULDER, hereinafter referred to as the "City," and \_\_\_\_\_, hereinafter referred to as the "Contractor."

RECITALS:

WHEREAS, the City is desirous of contracting with one company for \_\_\_\_\_ for the period from \_\_\_\_\_ to \_\_\_\_\_, inclusive; and

WHEREAS, the Contractor has submitted the lowest and best bid for said \_\_\_\_\_.

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein stated, the parties agree as follows:

1. The City agrees to use the Contractor's services in connection with \_\_\_\_\_ needed and required by it during the period from \_\_\_\_\_ to \_\_\_\_\_, inclusive, and the Contractor covenants and agrees to provide said services as required and requested by the City during said period.

2. It is agreed that the request for bids, the specifications, and the Contractor's proposal, copies of which are hereto attached, are hereby made a part of this Contract, and each of the parties hereto agrees to carry out and perform all of the provisions of said documents upon its part to be performed. In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- A) The Contract;
- B) The request for bids and specifications; and
- C) The Contractor's proposal.

3. City agrees to pay for said services and materials the prices as set forth in the Contractors proposal.

4. Payment by the City shall be made upon receipt of invoices from the Contractor, which shall be subject to verification as to the cost of materials used, and the time spent in performance of the services. The City shall not be liable for payment for services or materials which do not conform to the Contract documents.

5. The work to be done under this Contract and under the specifications above referred to shall include the furnishings of all materials, labor and equipment therefore.

6. The Contractor agrees that it shall perform all said services and supply the necessary materials to the entire satisfaction of the director of the department requesting said work. All material used and all labor performed shall be subject to the inspection and approval or rejection of the director of the department requesting said work, or his or her authorized agent.

7. The City hereby reserves the right to decide all questions arising as to the proper performance of said services, and as to the quality of the materials used. In the event that the City shall determine that the services are not being performed in accordance with the terms of this Contract, or, if the services be wholly, or in part, negligently, or improperly performed, then written notice of such defect or defects shall be given to the Contractor.

In the event that such defect or defects are not remedied within a reasonable time from the date notice is given, the City may, at its option, declare the Contractor to be in default, either as to the particular work performed and declared to be defective, or as to the entire Contract. In the event the City should declare the Contract to be in default only as to the particular work performed and declared defective, then the City may relet such portion and the costs incurred in consequence of such default may be applied in payment of any money due and owing to the Contractor. If there shall not be a sufficient sum due from the City, then in such case, the costs incurred shall be a just claim against the Contractor and shall be recoverable in any court of competent jurisdiction.

In the event that a default is declared as to work performed and declared defective, it is agreed and understood that such declaration of default shall not in any way relieve the Contractor from any liability for non-performance of the covenants and agreements of this Contract, but the same shall be and remain valid and binding obligations against the Contractor. As to work not declared to be in default, Contractor agrees to complete the same under the terms of this Contract.

8. Contractor agrees to procure and maintain in force during the terms of this Agreement, at its own cost, the following minimum coverages:

A. Workers' Compensation and Employers' Liability

- a) State of Colorado: Statutory
- b) Applicable Federal: Statutory
- c) Employer's Liability: \$100,000 Each Accident  
\$500,000 Disease-Policy Limit  
\$100,000 Disease-Each Employee
- d) Waiver of Subrogation

B. Commercial General Liability

- i. Bodily Injury & Property Damage General Aggregate Limit \$1,000,000
- ii. Personal & Advertising Injury Limit \$1,000,000
- iii. Each Occurrence Limit \$1,000,000

The policy shall be on an Occurrence Form and include the following coverages: Premises Operations; Personal and Advertising Injury; Medical Payments; Liability assumed under an

Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

C. Commercial Automobile Liability Limits

a) Bodily Injury & Property Damage Combined Single Limit	\$1,000,000
b) Medical Payments per person	\$ 5,000
c) Uninsured/Underinsured Motorist	\$ 100,000

Coverage is to be provided on Business Auto, Garage, or Truckers form. Coverage provided should be at least as broad as found in ISO form CA0001 (BAP), CA0005 (Garage) or CA0012 (Trucker) including coverage for owned, non-owned, & hired autos.

Prior to the execution of this Contract by the City, the Contractor shall forward Certificates of Insurance to Purchasing. The insurance required shall be procured and maintained in full force and effect for the duration of the Contract. Certificate Holder shall be the City of Boulder at 1777 Broadway, P.O. Box 791, Boulder, CO 80306.

**All insurance policies** (except Workers Compensation) **shall include City of Boulder and its elected officials and employees as additional insureds as their interests may appear.** The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto Liability.

The City requires that all policies of insurance be written on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the City.

The City of Boulder reserves the right to reject any insurer it deems not financially acceptable by insurance industry standards. Property and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of not less than A- VI.

Certificates of insurance on all policies shall give the City of Boulder written notice of not less than thirty (30) days prior to cancellation or change in coverage.

9. The Contractor agrees to indemnify and save harmless the City against any and all damages to property or injuries to or death of any person or persons arising from its performance of this Contract, including property and employees or agents of the City and shall defend, indemnify and save harmless the City from any and all claims, demands, suits, actions or proceedings of any kind or nature, including without limitation Worker's Compensation claims, of or by anyone whomsoever in any way resulting from or arising out of the Contractor's operations in connection with this Contract, including operations of sub-contractors and acts or admissions of employees or agents of the Contractor or its sub-contractor.

10. Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended.

11. The relationship between the Contractor and the City is that of an independent contractor. The Contractor shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. The Contractor shall not be deemed to be, nor shall it represent itself as, an employee, partner, or joint venturer of the City. No employee or officer of the City shall supervise the Contractor. **The Contractor is not entitled to worker's compensation benefits and is obligated to directly pay federal and state income tax on money earned under this Contract.**

12. The Contractor agrees that it will not cause or permit any claims in the nature of mechanic's liens for materials or labor placed or used under the terms of this Contract to be filed or served upon the City; and the Contractor hereby guarantees to indemnify and save harmless the City against any and all such claims for liens which may be filed or asserted against any of the work done hereunder.

13. The City agrees that the Contractor shall not be liable for any delay or non-performance due to the failure of the source of supply from which the Contractor obtains the materials to make delivery, or due to delays in transportation, labor strikes, floods, fires, acts of God, or to the acts or regulations of any governmental entity or any branch or agency thereof. The Contractor however, shall not be excused from liability for delays or non-performance caused by events or conditions within its control, nor for delays or non-performance which it could have foreseen and avoided, prevented or significantly ameliorated by exercising reasonable prudence or diligence, nor for any delays or non-performance caused in whole or in part by the Contractor itself.

14. In the event of delay or non-performance by the Contractor for any reasons set forth in paragraph 13 of this Contract, or for any other reason, the City shall be free to obtain said services from other sources without incurring liability or damages to the Contractor therefor.

15. The Contractor shall not assign this Contract without the written consent of the City, which it may withhold at its sole discretion.

16. This Contract shall be subject to the provisions of the Charter, Municipal Code and Ordinances of the City of Boulder.

17. This Contract may be terminated by either party if it has been materially breached by the other party and proper notification is tendered. Notification of intent to terminate this Contract shall be given in writing thirty (30) days prior to the date of termination.

18. The City reserves the right to extend the Contract for additional one year terms, and may grant up to four one year extensions if mutually agreeable by both parties and conditions remain constant. Contract renewals shall be in writing and signed by both parties.

19. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the City and the Contractor that any such party or entity, other than the City or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

20. The waiver of any breach of a term, provision, or requirement of this Contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

21. This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by the City pursuant to City rules.

22. The Contractor certifies that the Contractor shall comply with the provisions of section 8-17.5-101 et seq., C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

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

- a) Notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b) 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 contractor 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 Contractor further agrees 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 Contractor fails to comply with any requirement of this provision or section 8-17.5-101 et seq., C.R.S. the City may terminate this contract for breach and the Contractor shall be liable for actual and consequential damages to the City.

23. Nothing herein 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



CITY OF BOULDER

ATTEST:

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City Manager

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City Clerk on behalf of the  
Director of Finance and Record

APPROVED AS TO FORM:

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City Attorney's Office