

(THIS IS A SAMPLE)

A G R E E M E N T

THE AGREEMENT is made on _____, 200_ (the “Effective Date”) between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and _____, a _____, [with its principal place of business located at/ doing business at] _____(the “Consultant”; that agreement, the “Agreement”).

RECITALS

- A.** The City wishes to procure [describe the type of service] from the Consultant.
- B.** The Consultant is ready, willing, and able to provide these services as set forth below

NOW, THEREFORE, the parties agree as follows:

1. COORDINATION AND LIAISON: The Consultant shall fully coordinate all services under to the Agreement with the Director of Mayor’s Greenprint Denver Program, (“Director”) or, if and as directed, with another designated supervisory person (“Project Manager”). The Consultant shall submit work orders, correspondence, pay requests, and submittals to the Project Manager.

2. SERVICES TO BE PERFORMED:

a. As the Director generally directs, the Consultant shall diligently undertake, perform, and complete all of the services set forth on attached **Exhibit A** (the “Scope of Work” or “SOW”), to the City’s satisfaction.

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

3. TERM: The Agreement will commence on _____, 2007, and will expire on _____ (the “Term”). Subject to the Director’s prior written authorization, the Consultant shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Director.

4. COMPENSATION AND PAYMENT:

a. Fee: The Consultant's sole compensation for its services rendered and costs incurred under the Agreement is _____ and amounts billed may not exceed the rates set forth in **Exhibit B**.

b. Reimbursement Expenses: There are no reimbursable expenses allowed under the Agreement. All of the Consultant's expenses are contained in the rates in Exhibit B.

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

d. Maximum Contract Amount:

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed _____ (\$_____) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Consultant beyond that specifically described in **Exhibit A**. Any services performed beyond those set forth therein are performed at Consultant's risk and without authorization under the Agreement.

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

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

6. TERMINATION:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the

Consultant. However, nothing herein shall be construed as giving the Consultant the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Director.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Consultant or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Consultant's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. If the Agreement is terminated without cause the Consultant will be compensated for work requested and satisfactorily performed. Upon termination of the Agreement by the City, with or without cause, the Consultant will not have any claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work requested and satisfactorily performed as described in the Agreement.

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

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

8. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Consultant. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or

remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

9. INSURANCE:

a. General Conditions: At or before the time of execution of the Agreement, the Consultant shall secure the following insurance covering all operations, goods or services provided pursuant to the Agreement. Consultant shall keep the required insurance coverage in force at all times during the Term of the Agreement, or any extension, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance must be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as “A”VIII or better. Each policy must contain a valid provision or endorsement stating “Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Administrator (the “Administrator”), 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Written notice must be sent thirty (30) days before cancellation or reduction unless due to non-payment of premiums for which notice must be sent ten (10) days prior.” If any policy is in excess of a deductible or self-insured retention, the Consultant must notify the City of this. The Consultant is responsible for the payment of any deductible or self-insured retention. The City reserves the right to require the Consultant to provide a bond, at no cost to the City, in the amount of the deductible or self-insured retention to guarantee payment of claims.

b. Proof of Insurance: Consultant shall provide a copy of the Agreement to its insurance agent or broker. Consultant further agrees to have its agent or broker provide proof of Consultant’s required insurance on www.Ins-Cert.com and link the information to the City. The City reserves the right to require the Consultant to provide a certificate of insurance, a policy, or other proof of insurance as required by the Administrator in his sole discretion.

c. Additional Insureds: For general liability, excess/umbrella liability, pollution legal liability, liquor liability, and inland marine, Consultant’s insurer shall name the City as an additional insured.

d. Waiver of Subrogation: For all coverages, Consultant’s insurer shall waive subrogation rights against the City.

e. Sub-contractor: All subcontractors, independent contractors, suppliers, and other entities performing work under the Agreement are subject to all the insurance coverages required of Consultant under this Agreement. Consultant shall include all subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that these entities maintain the coverages required by the Agreement. Consultant shall provide proof of insurance for all subcontractors, independent contractors, suppliers or other entities upon request by the City.

f. Workers' Compensation/Employer's Liability Insurance: Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Consultant warrants that none of the Consultant's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect a rejection thereof during the Term of the Agreement, and that any rejections previously effected, have been revoked as of the date Consultant executes the Agreement.

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

h. Automobile Liability: Consultant shall maintain limits of \$1,000,000 for bodily injury per person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage applicable to all vehicles operating on City property and elsewhere.

i. Additional Provisions:

(1) For all general liability, the policies must provide the following:

(A) If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, the Consultant shall notify the City within ten (10) days and reinstate the aggregates required;

(B) Unlimited defense costs in excess of policy limits;

(C) Contractual liability covering the indemnification provisions of the Agreement;

(D) A severability of interests provision;

- (E) Waiver of exclusion for lawsuits by one insured against another;
- (F) A provision that coverage is primary; and
- (G) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

(2) For all general liability, if the policy is a claims-made policy, then the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

10. INDEMNIFICATION:

a. The Consultant shall indemnify, defend and hold harmless the City, including its elected and appointed officials, employees and agents, against (1) any and all damages, including loss of use, to property, including City property; (2) injuries to or death of any person or persons (including officers, agents and employees of the City); and (3) any and all claims, demands, suits, causes of action, liabilities, fines, penalties, costs, expenses, or proceedings of any kind or nature, including workers' compensation claims, of or by anyone, regardless of the legal theory(ies) upon which premised, in any way resulting from, relating to, or arising out of, directly or indirectly, the acts or omissions of the Consultant or those performing under it in connection with its operations or performance under the Agreement or its use or occupancy of real or use of personal property hereunder, including acts or omissions of affiliates, agents, officers, employees, contractors, representatives, invitees, or licensees of the Consultant or its sub-consultants, subcontractors, or other entities performing under it in connection with its operations or performance under the Agreement. The Consultant's indemnity obligation do not apply to liability or damages proximately caused by the sole negligence of the City's officers, agents and employees.

b. The indemnity obligations cover the City's defense costs should the City, in its sole discretion elect to provide its own defense. The City retains the right to approve counsel, if any, selected by the Consultant to fulfill the foregoing indemnity obligation, which right of approval will not be unreasonably withheld.

c. The indemnity obligation includes litigation fees and expenses, including court filing fees, court costs, arbitration fees or costs, witness fees, and all other fees and costs of investigating and defending or asserting any claim for indemnification under the Agreement, including in each case, attorneys' fees, other professionals' fees and disbursements.

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

11. COLORADO GOVERNMENTAL IMMUNITY ACT: In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

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

13. ASSIGNMENT; SUBCONTRACTING: The Consultant shall not voluntarily or involuntarily assign any of its rights or obligations under the Agreement or subcontract performance obligations without obtaining the Director's prior written consent. Any attempt by the Consultant to assign its rights or obligations or subcontract performance obligations without the Director's prior written consent will be void and, at the Director's option, automatically terminates the Agreement. The Director has sole and absolute discretion whether to consent to any assignment of rights or obligations and subcontracting of performance obligations under the Agreement. In the event of any subcontracting or unauthorized assignment: (i) the Consultant shall remain responsible to the City; and (ii) it shall not create a contractual relationship between the City and sub-consultant or subcontractor or assignee.

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

15. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or

entity. Any person or entity other than the City or the Consultant receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

16. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Consultant lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

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

18. CONFLICT OF INTEREST:

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

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

19. NOTICES: Notices concerning termination of the Agreement, alleged or actual violations of the terms of the Agreement, and matters of similar importance must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Consultant at the address first above written, and if to the City at:

Director of Greenprint Denver Program
1437 Bannock Street, Room 382
Denver, Colorado 80202

With a copy of any such notice to:

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

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

20. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

a. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, as now existing or hereafter amended (the "Certification Statute"). Compliance by the Consultant and its sub-consultants and subcontractors with the Certification Statute is expressly made a contractual condition of the Agreement.

b. The Consultant shall not knowingly employ or contract with an illegal alien to perform work under the Agreement. The Consultant shall not enter into a contract with a sub-consultant or subcontractor that knowingly employs or contracts with an illegal alien or that fails to certify to the Consultant that it does not knowingly employ or contract with an illegal alien to perform work under the Agreement.

c. The Consultant represents, warrants, and agrees that:

(1) It has verified or attempted to verify that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the U.S. Social Security Administration and U.S. Department of Homeland Security ("Basic Pilot Program" or "BPP"), as defined in § 8-17.5-101(1), C.R.S., or that if it is not accepted into the BPP prior to entering into the Agreement, it shall apply to participate in the BPP every three months until either it is accepted into the BPP or its has completed its obligations under the Agreement, whichever occurs first.

- (2) It will not use the BPP to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.
- (3) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs with or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three days, and terminate such sub-consultant or subcontractor if within three days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- (4) It shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

d. If the Consultant fails to comply with any provision of this Article 20, the City may terminate the Agreement for breach and the Consultant shall be liable for actual and consequential damages to the City. The Consultant agrees to execute Exhibit C attached hereto.

21. DISPUTES: All disputes between the City and Consultant regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Director.

22. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code. The Charter, Revised Municipal Code and Executive Orders of the City and County of Denver are expressly incorporated into the Agreement. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado Second Judicial District.

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

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

25. LEGAL AUTHORITY: Consultant represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Consultant represents and warrants that he has been fully authorized by Consultant to execute the Agreement on behalf of Consultant and to validly and legally bind Consultant to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Consultant or the person signing the Agreement to enter into the Agreement.

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

27. GENERAL CONSTRUCTION:

- a. The words “party” and “parties” refer only to a named party to the Agreement.
- b. Except in paragraph 3, the word “term” is to be read as if followed by the phrase “, conditions, and covenants”.
- c. The words “include,” “includes,” and “including” are to be read as if they were followed by the phrase “without limitation” unless specifically qualified by words of limitation.

d. The captions and headings set forth in the Agreement are for convenience of reference only and shall not be construed so as to define or limit its terms.

e. Unless otherwise specified, any general or specific reference to statutes, laws, regulations, charter or code provisions, ordinances, or executive orders, including memoranda thereto, means statutes, laws, regulations, charter or code provisions, ordinances, and executive orders, including memoranda thereto, as amended or supplemented from time to time and any corresponding provisions of successor statutes, laws, regulations, charter or code provisions, ordinances, or executive orders, including memoranda thereto.

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

29. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Consultant's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

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

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

32. COUNTERPARTS OF THE AGREEMENT: The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

33. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments thereto will, be binding upon the parties and their successors and assigns.

(BALANCE OF PAGE BLANK)

IN WITNESS WHEREOF, the parties have executed the Agreement as of the date first written above.

ATTEST:

CITY AND COUNTY OF DENVER:

By: _____
STEPHANIE Y. O'MALLEY, Clerk
and Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
M A Y O R

RECOMMENDED AND APPROVED:

By: _____
Title: _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

City Attorney for the City and County of
Denver

By: _____
Auditor

By: _____
Assistant City Attorney

Contract Control No. _____

“CITY”

ATTEST: [If required by Corporate procedures]

[ENTITY NAME]
Taxpayer (IRS) I.D. No. _____

By: _____

By: _____

Title: _____

Name: _____
(please print)

Title: _____

“CONSULTANT”

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
(RATES)

EXHIBIT C

CERTIFICATION UNDER §8-17.5-102, C.R.S.

The Consultant, in compliance with §8-17.5-102, C.R.S., certifies that at the time of the execution of this Certification:

1. The Consultant does not knowingly employ or contract with an illegal alien.
2. The Consultant has participated or attempted to participate in the Basic Pilot Employment Verification Program in order to verify that it does not employ any illegal aliens.

[Printed] NAME OF CONSULTANT

By: _____
Signature

[Printed] Name of Person Signing

[Printed] Title

DATE: _____