

PROFESSIONAL SERVICES REQUEST FOR PROPOSALS

Aquifer Storage and Recovery Project – Borehole Drilling, Logging, and Sampling and Monitoring Well Installation

Project Description

Denver Water is seeking a consultant to manage drilling an exploratory borehole into the Denver Basin aquifers and installing a monitoring well at its Capitol Hill Pump Station and Reservoir site. The purpose of the project is to verify hydrogeologic conditions at the site and obtain groundwater and aquifer material samples. This information will support the development of an operational scale aquifer storage and recovery facility and provide ongoing water quality and water level monitoring capability.

Background and History

Denver Water has been investigating aquifer storage and recovery (ASR) as a potential future water supply option since 2014 with the goal of constructing an operational ASR facility. Denver Water's current intent is to confirm expected productivity of the Denver Basin aquifers at the Capitol Hill Pump Station and Reservoir, located in the Congress Park neighborhood of Denver, and construct an ASR facility at this location if the aquifer proves productive after borehole drilling. Data collected from this project will also be used in an application for a Class V Injection Permit/Authorization from the Environmental Protection Agency. After a permit or authorization for injection has been received Denver Water plans to begin the design process for the full-scale ASR facility.

Project Objectives

The following specific project objectives have been identified by Denver Water and will be further defined upon arriving at a final, agreed upon scope of work with the selected consultant:

- Oversee and manage a procurement process to select subcontractors to perform the work described below.
- Oversee and manage on site the implementation of the field work, including the following:
 - Drill borehole to the base of the Laramie-Fox Hills Aquifer.
 - Obtain samples of the aquifer formation from within appropriate zones within the Upper Arapahoe, Lower Arapahoe, and Laramie-Fox Hills aquifers.
 - Log the borehole with geophysical logging equipment.
 - Log the borehole with nuclear, or borehole, magnetic resonance (NMR) logging equipment.
 - Using the log data collected, develop characterization of the Upper Arapahoe, Lower Arapahoe, and Laramie-Fox Hills aquifers in terms of transmissivity, permeability, and other pertinent aquifer parameters and a conclusion of which aquifers at the site would support development of a well.
 - Based on conclusions of above aquifer characterization install a monitoring well capable of collecting information in each aquifer of interest, i.e., the Upper Arapahoe, Lower Arapahoe, and Laramie-Fox Hills aquifers.
 - Based on conclusions of above aquifer characterization, obtain water samples from productive zones in the Upper Arapahoe, Lower Arapahoe, and Laramie-Fox Hills aquifers for analysis. Methods for obtaining samples could include, but are not limited to, zone pumping/packer testing and/or using the monitoring well capable of producing water samples in each aquifer.
- If, in the opinion of the proposing consultant, alternative approaches or additional scope items more appropriately address the purposes of this project and the potential future development of an ASR facility at this site, consultant may propose those items along with description and justification and approximate additional and/or reduced costs for those scope items.

Consultant Scope of Services

Denver Water will be relying on the selected consultant (Consultant) to manage the execution of the components of this project specified below. The work is generally divided into two parts. Part 1 involves working with Denver Water to assemble a detailed scope of work and schedule for the project, plan the field work, and conduct the procurement process for selecting field contractors, who will be fully and solely managed by the Consultant for completing the second part of the work, the field activities. In procuring the services of field contractors, the consultant will follow Denver Water's formal competitive selection requirements set forth in Exhibit B to the attached contract template. The Consultant will be responsible for:

Part 1

- Developing a scope of work for all work in Part 2, below.
- Planning and scheduling all field activities and coordinating such plans with Denver Water staff.
- Competitively procuring qualified and bonded contractors for field activities:
 - acoustic analysis to plan sound mitigation,
 - sound wall installation,
 - borehole drilling and providing aquifer samples,
 - geophysical and NMR logging,
 - monitoring well installation,
 - providing ability for water sampling and water level recording, and
 - ensuring contractors hire qualified and bonded sub-contractors.

Part 2

- Executing and managing contracts with said subcontractors,
- Obtaining all necessary approvals or permits,
- Managing and coordinating, in conjunction with Denver Water, all field activities,
- Analyzing logging results and providing conclusions of aquifer characterization and recommendations as to which aquifers and what intervals should be pumped to obtain water samples,
- Providing aquifer material samples to Water Quality Lab staff,
- Coordinating between driller and Water Quality Lab staff for the collection of water samples (if final scope requires),
- Communicating progress updates to Denver Water as well as any problems or complications encountered and the resolution of such problems,
- Ensuring contractors and sub-contractors meet Denver Water's Minority- and Woman-owned Business Enterprise (MWBE) goals, and
- Producing a project final report of the field activities and data collection results.

Consultant Qualifications

Statements of Qualifications should describe the consultant's direct and recent experience in implementing projects similar to the above scope of work. The proposed approach to the work and experience with directing and completing such work, including field oversight, and the application of it to planning for aquifer storage and recovery in the Denver Basin aquifers will be important considerations in the selection criteria. Include resumes of all key personnel who will be involved (2 pages maximum per resume). Resumes will not count toward page limit. Additional submittal information provided below.

Denver Water Responsibility

Denver Water will provide to the Consultant available relevant information to aid in the work planning, procurement, and execution. This includes but is not limited to:

- Previous studies.
- Project objectives.
- Provide review comments within agreed upon schedule
- Communicating progress updates to Consultant on Denver Water task as well as any problems or complications encountered and the resolution of such problems.

Project Assumptions

The following assumptions were made in the development of this proposed scope of work:

- Denver Water will enter into a contract with the Consultant for Part 1 of the work, which will consist of creating a final scope of work, schedule, and work plan as described in Phase 1, below. The Consultant will be solely responsible for competitively procuring the services of the field contractors (acoustic analysis, sound walls, drilling, logging, monitoring well) as described in Phase 2, below, using a competitive bid process approved by Denver Water. The Consultant's contract will be amended to incorporate Part 2 upon closure of the Consultant's invitation for bids. Part 2 consists of the Consultant entering contracts with the field contractors and managing the work of said contractors.
- While the Consultant will be responsible for selecting and managing the contractors for Part 2 of this scope, Denver Water expects that the Consultant will work in partnership with Denver Water staff in execution of the project.
- Denver Water desires to minimize noise and other potential neighborhood disturbances from this project. Our Public Affairs team has developed an outreach plan for the neighborhood.
- The Consultant will obtain needed variance to City and County of Denver Noise Ordinance from the Denver Board of Environmental Health. Consultant may need to rely on the selected acoustic consultant to assist in presenting results to the Board of Environmental Health.
- The Consultant will submit all agency notices and obtain all needed permits including, but not limited to those required by the State Engineer's Office and the Federal Aviation Administration (FAA).
- For the Part 2 portion of the scope, Denver Water has made assumptions as to how some of the tasks are distributed between the drilling and logging contractors. The Consultant may propose to distribute these tasks differently as necessary depending on the expertise and services of the contractors procured.
- Denver Water's Water Quality Lab will be responsible for performing any analysis and tests with water and aquifer material samples.
- Public relations efforts will be completed by Denver Water. Any public interaction with or complaints directed to the Consultant or the field contractors at the work site will be promptly communicated to Denver Water.
- The work site is on Denver Water property that is normally secured. The exception to this is the location of sound monitoring equipment that may need to be located off-site. Any additional security deemed necessary by either Denver Water or the field contractors for Phase 2 will be the responsibility of the field contractors.
- Reports shall be provided in electronic media on Windows compatible Hi-Speed USB Flash Drives and in quality hardcopy media.
- The site is free of any sensitive cultural resources that require environmental clearance or other required permitting at the local, state, or federal level.
- The Consultant will compile documents for bid packages and other submittals.

Project Schedule

The *anticipated* Project Schedule is summarized as follows:

- April 2, 2021 Request for Proposals issued
- April 15, 2021 Mandatory pre-proposal meeting
- April 19, 2021 Final written questions due by 11:59 PM MDT
- April 30, 2021 Proposals due at 5:00PM, MDT
- May 13-14, 2021 If necessary, top two or three rated Consultant interviews
- June 23, 2021 Selected Consultant recommendation to the Board
- June 24, 2021 Notice to Proceed issued to selected Consultant
- July 31, 2021 Field contractor procurement completion
- August 25, 2021 Contract amendment recommendation to Board for Part 2
- August 26, 2021 Notice to proceed issued by Consultant to field contractors
- October 15, 2021 Field activities completion
- November 30, 2021 Final report due

Proposals shall include a detailed schedule with any deviations from the aforementioned schedule clearly identified and explained.

Clarifications and Mandatory Pre-proposal Meeting

Anyone planning to submit a proposal must attend the Pre-proposal Meeting that will be held via on-line platform April 15, 2021 at 10:00 AM MDT. Please submit by 5PM MDT, April 14, 2021 all email addresses of those planning to attend this meeting to Bob Peters (Robert.peters@denverwater.org).

Any requests for clarification or additional information regarding the submission for this RFP shall be submitted in writing via e-mail to Robert.peters@denverwater.org, or orally during the Pre-proposal Meeting. Written requests for interpretation, clarification, and/or additional information must be received no later than: April 19, 11:59 PM MDT.

Addendum

Denver Water may issue an Addendum to this Request for Proposals if it becomes necessary to further define or change the needed services described herein.

Scope of Services

Phase 1 – Project Management and Administration

Project Management and Administration includes the following tasks:

- 1.1 General project management
- 1.2 Project management plan development
- 1.3 Project controls and reporting
- 1.4 Project workshops/meetings

Task 1.1: General Project Management

Time for this task is allocated to the Consultant Project Manager to oversee and administer the project.

Task 1.2: Project Management Plan and Scope of Work Development

The Project Management Plan will document the key project information required by the Consultant Project Team members to assist them in executing the project on-time, on-budget, with high quality, and meeting Denver Water's critical success factors. The key elements of the project plan are described as follows:

- Kick-off meeting. The Consultant will convene a kick-off meeting with Denver Water staff to review the project's goals, objectives, critical success factors, and develop final scope of work.
- Consultant Project Team members, roles, and responsibilities. This will also include the staffing plan (e.g., management, engineering, QA/QC).
- Scope of work developed in coordination with Denver Water staff that includes a work breakdown structure and cost-loaded schedule.
- Baseline Planned Value (PV) schedule to be used for Earned Value (EV) reporting.
- Project schedule in GANTT chart format. Schedule updates will be provided in monthly progress reports, if changes have been made and agreed upon by Denver Water. The project schedule shall include meetings, workshops, and key deliverables. Dates for Denver Water-supplied information will also be provided.
- Project safety plan.
- Project budgets.
- Communications plan.
- Risk management plan.
- QA/QC plan.
- Project documentation plan and file structure.
- Change management process.
- Conflict resolution plan.

Deliverables:

The following deliverables will be provided as part of Task 1.2:

- *Project Management Plan (which includes all above items in Task 1.2)*

Task 1.3: Project Controls and Reporting

Monthly invoices shall be prepared and submitted to Denver Water in an approved format. Invoices shall be broken down by task, Consultant, and field contractors and include the following:

- Total contract amount
- Detailed charges for the current invoice period
- Total charges to date
- Earned value analysis and graph
- Previous billings
- Outstanding balance
- Current amount remaining
- Total amount due

The Consultant shall be responsible for the management of the Consultant and the field contractors overall project controls, actively coordinating with Denver Water's Project Manager to manage the following:

- Project costs
- Project schedule
- Document control

Monthly project status reports shall be prepared and submitted to Denver Water, along with the monthly invoices. The reports shall include the following:

- A summary of services completed since the previous report.
- The current project schedule and budget status.
- Project issues and potential change logs.
- Milestones and/or deliverables scheduled in the coming month.

This task also includes periodic project review by the Consultant's management to ensure the project meets Denver Water's critical success factors, is on schedule, and is within budget.

Deliverables:

The following deliverables shall be provided as part of Task 1.3:

- *Monthly invoices*
- *Monthly written project status reports*

Task 1.4: Project Meetings

Meetings are to inform and obtain input from Project Team stakeholders. Meetings shall include the following:

- Kickoff meeting with Denver Water team and Consultant.
- Field activity kickoff meeting with Denver Water, Consultant, and field contractors' representatives.
- Weekly update meetings or conference calls to discuss progress, ongoing issues and conflict resolution, schedule, and budget status.

Meetings will be held in accordance with Denver Water COVID-19 protocols, which may necessitate remote, on-line meetings. Meetings should include any necessary personnel applicable to the items on prepared agendas. Consultant will develop meeting agendas and identify issues needing resolution in advance.

Deliverables:

The following deliverables shall be provided as part of Task 1.4:

- Advance prepared agendas for each meeting.
- An ongoing log of decisions and conflict resolutions.
- Notes and action items from each meeting.

Phase 2 – Field Contractor Procurement

The Consultant will be responsible for Field Contractor Procurement in accordance with Denver Water procurement standards (Exhibit B to the attached contract template) which includes the following tasks:

2.1 Procurement of the following main contractors for field activities:

- Acoustic Consultant to develop noise mitigation plan
- Borehole drilling, packer testing, and aquifer material sampling.
- Monitoring well installation
- Geophysical and Nuclear (Borehole) Magnetic Resonance logging.
- Sound wall installation and removal.

2.2 Entering into and managing contracts with each field contractor subject to Denver Water Board approval of amendment of Consultant contract authorizing Part 2 expenditures.

Task 2.1: Procurement

Acoustic Consultant

Consultant will competitively procure an acoustic consultant to analyze the noise impacts to the properties surrounding the project site and recommend noise mitigation measures to minimize impacts to the surrounding properties and meet requirements under the City and County of Denver noise ordinance. If requirements under the ordinance are unable to be met using mitigation measures, the acoustic consultant will provide advice to Denver Water on obtaining a variance to the ordinance from the Denver Board of Environmental Health.

Drilling Contractor

Consultant will competitively procure a drilling contractor and enter into and manage a contract for the following services:

- Drilling borehole of appropriate diameter to base of Laramie-Fox Hills aquifer.
- Maintaining borehole integrity for all logging, testing, monitoring well installation, and sampling activities.
- Installing a monitoring well or conducting other methods to obtain water samples in coordination with Denver Water's Water Quality Lab staff.
- Obtaining aquifer material samples for the purpose of mixing with future injectate water. (Alternatively, this task may need to be completed as part of the Borehole Logging Task 2.2 depending on respective contractor capabilities.)
- All post-project site clean-up and restoration.
- Other scope items herein more appropriately addressed by this contractor.
- Other scope items not included herein, but being proposed by Consultant, including alternative or additional items that appropriately address the purposes of this project and the potential future development of an ASR facility at this site.

Borehole Logging

Consultant will competitively procure a logging contractor and enter into and manage a contract for the following services:

- Geophysical logging.
- Nuclear, or Borehole, Magnetic Resonance (NMR) logging.
- Other scope items herein more appropriately addressed by this contractor.

Sound Abatement Contractor

Consultant will competitively procure a contractor for sound abatement to be employed for the duration of field activities and conduct sound monitoring required by enter into and manage a contract for the following services:

- Assemble sound walls at project site.
- Conduct sound monitoring as required by the Denver Board of Environmental Health.
- All site clean-up and restoration related to sound wall assembly and removal.

Other Scope Items

Any alternate scope items not able to be performed by the above field contractors shall also be competitively procured.

Notes:

1. In soliciting any bids for field contractors, the Consultant shall condition the acceptance of any bid on the Board's authorization of expenditures.
2. In procuring the services of field contractors, the consultant will follow Denver Water's formal competitive selection requirements set forth in Enterprise Procedure FN-03

3. Consultant will allow Denver Water to review its procurement plan to ensure that it meets DW's minimum standards for a competitive selection process.
4. Consultant shall meet the Board's MWBE participation goal of 5% in Part 2 of the project.

Task 2.2 Contracting

Consultant shall enter into and manage contracts with each field contractor above and ensure performance of any sub-contractors to the field contractors, above. Contracts must include Denver Water standard audit and records inspection language.

Deliverables:

The following deliverables shall be provided as part of Task 2.1 and 2.2:

- Bid Tabulation with recommended contractor including rationale for selection.
- Draft and final contracts.
- List of sub-contractors and their work tasks.
- List of certified MWBE contractors to fulfill the 5% goal stated above.

Phase 3 – Permitting, Notices, and Submissions to the Colorado State Engineer's Office

Consultant will be responsible for all required permits, variances to local ordinances, agency notices, and submissions to the Colorado State Engineer's Office pertinent to the project scope, which includes, but is not necessarily limited to, the following:

- Variance to City and County of Denver Noise Ordinance.
- Notice to Federal Aviation Administration.
- Notice of Intent to Drill Borehole.
- Notice of Installation of Monitoring Well and any needed variances to State Engineer rules.

Deliverables:

The following deliverables shall be provided as part of Phase 3:

- Copies of all submissions.
- Copies of any additional correspondence between Consultant and the State Engineer's Office and other agency offices.

Phase 4 – Management and Execution of Field Activities

Consultant will be responsible for the management of field activities which includes overseeing on-site implementation, coordination, and completion of all field-related activities:

- 4.1 Completion of acoustic analysis
- 4.2 Borehole drilling, obtaining aquifer material samples, installing monitoring well, testing, and sampling activities.
- 4.3 Geophysical and NMR logging.
- 4.4 Sound wall installation and removal.
- 4.5 Site restoration.

Task 4.1: Oversee acoustic consultant

Consultant will oversee the work of the acoustic consultant to analyze the project site and determine noise mitigation, communicate to sound wall contractor the recommended and required noise mitigation measures, and coordinate installation of measures by sound

wall contractor and ensure adherence to required measures, if applicable and/or specified by approved variance to the Denver noise ordinance, by all contractors.

Deliverables:

The following deliverables shall be provided as part of Task 4.1:

- Report from acoustic consultant detailing analysis and recommended mitigation measures and any needed variances to the Denver noise ordinance.

Task 4.2: Oversee Borehole drilling, obtaining aquifer material samples, installing monitoring well, testing, and sampling activities.

- Determine the location of the borehole to be drilled in close coordination with Denver Water staff and drilling contractor. Communicate location to acoustic consultant for appropriate analysis of noise impacts from drilling equipment.
- Drilling borehole of appropriate diameter to base of Laramie-Fox Hills aquifer.
- Maintaining borehole integrity for logging, testing, and sampling activities, and monitoring well installation.
- Using log data, characterize aquifers and determine which aquifers will support well development and identify representative water producing zones/intervals from which to conduct sampling/pumping of formation water and/or screening within the monitoring well.
- Conducting testing to obtain water samples from each of the Upper Arapahoe, Lower Arapahoe, and Laramie-Fox Hills aquifers and developing estimates of aquifer transmissivity. Consultant will coordinate in advance with Denver Water's Water Quality Lab staff on schedule for testing and the amount and timing of pumping necessary to obtain desired samples. (Alternatively, this task may be completed as part of the ongoing, post-project operation and use of the monitoring well depending on respective contractor capabilities and proposed scope of work.)
- Obtaining aquifer material samples from appropriate aquifer zones for the purpose of mixing with future injectate water. Final scope of work will specify number of samples to collect. (Alternatively, this task could be completed as part of the Logging task depending on respective contractor capabilities.)
- If needed, communicating timing of aquifer material being obtained from each of the Upper Arapahoe, Lower Arapahoe, and Laramie-Fox Hills aquifers so that Lab staff can arrive on site to collect the samples.
- Consultant will provide appropriate containers for aquifer material samples.

Deliverables:

The following deliverables shall be provided as part of Task 4.2:

- Access to and/or coordination of gathering of all samples by Water Quality Lab staff.
- Include aquifer characterization estimates in final report.
- Monitoring well ongoing operations and maintenance needs and procedures communicated orally to Denver Water staff and provided in pdf files in the form of manuals and/or instructions, or standard operation procedures. Include as appendix to final report.

Task 4.3: Geophysical and Nuclear (Borehole) Magnetic Resonance logging

Oversee and coordinate the implementation of Geophysical and Nuclear (Borehole) Magnetic Resonance logging of the borehole to obtain data on the hydrogeologic characteristics of Denver Basin aquifers at project location.

- Coordinate schedule between driller and logger to ensure timely logging activities.

Deliverables:

The following deliverables shall be provided as part of Task 4.2:

- Digital files of all logging data.
- Image and/or pdf files of logs.

Task 4.4: Sound wall installation and removal.

Coordinate schedule with sound wall contractor and oversee installation and removal of sound wall and noise monitoring site/equipment.

- Ensure sound walls are installed according to mitigation plan provided by acoustic consultant and in accordance with terms of the noise variance from Denver Board of Environmental Health.
- Ensure sound monitoring is conducted
- Obtain monitoring data and submit required reports to Board of Environmental Health at specified frequency.

Deliverables:

The following deliverables shall be provided as part of Task 4.3:

- Noise monitoring data in summary, electronic format for inspection by Denver Water.
- Required reports submitted to Board of Environmental Health with copies to Denver Water.

Task 4.5 Site restoration

Consultant will oversee the clean-up and restoration of the work site by all field contractors or their subcontractors. Post-restoration conditions will be as close to pre-project conditions as reasonably possible.

Phase 5 – Preparation of Final Report

The Consultant will be responsible for preparing the final report, which should document the following:

- Procurement process.
- Description/log of field activities.
- Problems/issues/conflicts encountered and resolution.
- Geophysical and N/BMR logs.
- Results of aquifer characterization for Upper Arapahoe, Lower Arapahoe, and Laramie-Fox Hills and recommendations for screened intervals for eventual well construction.
- Determination of and recommendations for potential for ASR well development for each aquifer.
- Information on monitoring well installation and operating and maintenance procedures.

Deliverables:

The following deliverables shall be provided as part of Phase 5

- Final Report in hard copy and pdf format.

Proposal Requirements

The proposal shall outline the Consultant's proposed Scope of Services, which shall include, at a minimum, the criteria set forth within this RFP and the Consultant's approach to administer and complete the project. A detailed project approach assists Denver Water in understanding the Consultant's comprehension of the project and the opportunities and constraints that a project of this complexity may contain. At a minimum, the Proposal shall include the following:

- A cover letter.
- The project approach, including any unique solutions or alternatives and clearly identifying assumptions.
- Tailored 2-page resumes, including experience in projects similar in nature and complexity to this Project, shall be provided for key personnel shown within the project organization chart. Key personnel proposed for the project shall remain available for the entirety of the project. A change of project personnel will only be permitted in extreme circumstances and may be subject to a monetary penalty.
- A manpower labor estimate (work breakdown structure) by labor type/hours for the major project phases and tasks provided under *Scope of Services*, above. Include a chart identifying the particular persons or classes of persons who will perform work, approximate number of hours, and the corresponding hourly rates (an 11-inch by 17-inch format for the work breakdown structure is acceptable).
- A detailed schedule with any deviations from the schedule included herein clearly identified and tied to the project approach.
- A written statement regarding the Consultant's eligibility to perform the work without a conflict of interest.
- Proposals shall be limited to 15 pages not including resumes (a double-sided page is counted as 2 pages). Pages that are 11x17 will count as one page, but please limit 11x17 pages to two.
- A MWBE goal of 5% has been set for Part 2 of this work. More information on Denver Water's MWBE Program can be found online: <http://www.denverwater.org/>.
- Any exceptions to Denver Water's contract template (Attached).

Consultant Selection

Denver Water may elect to follow the proposals with a formal questionnaire and/or interview to assist with the proposal evaluation. Final selection of a Consultant will be based upon the selection criteria detailed in the table below.

Denver Water will review the Proposals and make a selection based on best value while considering the following criteria:

Criteria	Standard	Weighting Factor
Project Personnel Qualifications	Do the assigned personnel have the skills and experience to provide a detailed and complete study? Do the personnel have firsthand experience in this type of work in the Denver Basin?	25%
Firm Qualifications	Does the firm have the appropriate support capabilities to meet the demands of the project? Has the firm done previous projects of this type of scope?	10%
Proposed Approach, Project Plan, and Schedule	Does the proposal show an understanding of the project objectives and the results desired from the project? Does the firm offer alternatives within the proposal that enhance the value to Denver Water?	40%

Criteria	Standard	Weighting Factor
Cost and Work Hours	Do the work hours presented accurately reflect the level of effort required to complete the project? How does distribution of unit labor and overhead costs compare to other firms?	20%
MWBE Participation	Does the proposal describe how Consultant and field contractors will attain the participation goal?	5%

The scale of the criteria is from 1 to 10; 1 is a poor rating, 5 is an average rating, and 10 is an outstanding rating. Criteria will be multiplied by the associated weight to give a weighted criteria score. The weighted criteria scores will be summed for a cumulative score. The maximum possible cumulative score is 100.

Proposal Submittal

Selection of a Consultant will be based on the selection criteria previously described. The Proposal shall address each component of the selection criteria.

Costs associated with Proposal preparation, pre-proposal meeting attendance, interview attendance, etc. shall be borne entirely by the proposing Consultant. Proposal information will become the property of Denver Water.

- **Proprietary or Confidential Information:**

- Proposers acknowledge that Denver Water may be required to disclose any or all of the documents submitted with a Proposal, pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201.1, et seq. Under C.R.S. § 24-72-204(3)(a)(IV), Denver Water may deny inspection of any confidential commercial or financial information furnished to Denver Water by an outside party. Therefore, a Proposer must clearly designate any documents submitted with its Proposal that the Proposer deems proprietary or confidential, to aid Denver Water in determining what must be disclosed in response to a request for documents under the Colorado Open Records Act.
- The Proposer's designation of material to be redacted must be reasonable or it will not be honored. For example, a Proposer may not designate the entire Proposal to be confidential and proprietary.

An electronic copy in portable document format of the Consultant's Proposal shall be received via email by 5:00PM, local time, on April 30, 2021 to Bob Peters, Project Manager, and Rachel Pence, Water Resource Engineer, Denver Water emails: Robert.peters@denverwater.org and Rachel.pence@denverwater.org. Please contact Bob Peters at 303-887-8789 with questions regarding this request. In addition, submit one hardcopy of the Consultant's Proposal with intellectual or proprietary property redacted to Bob Peters, 1600 W. 12th Avenue, Denver, CO, 80204-3412.

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (“Board”), a municipal corporation of the State of Colorado whose address is 1600 W. 12th Avenue, Denver, Colorado 80204, and [Name of Consultant] (“Consultant”), whose address is [Insert Consultant's address]. The Board and the Consultant agree as follows:

1. Scope of Work. The Consultant agrees to provide work to the Board in accordance with **Exhibit A**, attached and incorporated herein (the “Work”). The Work specifically includes any and all deliverables provided to the Board under this Agreement.

Generally, Consultant will be responsible for managing the drilling of an exploratory borehole and installation of a monitoring well at Denver Water’s Capitol Hill Pump Station and Reservoir site (the “Project”). The borehole to be drilled as part of the Project will be drilled into the Denver Basin aquifers to conduct geophysical and nuclear magnetic resonance logging, obtain groundwater samples, and obtain aquifer material samples for verifying hydrogeologic conditions and water quality analysis.

Under Part 1 of this Agreement, the Consultant will develop and refine the scope of work for Part 2 of the physical work to be performed for the Project, and procure sub-contractor bids through a competitive bid process for the Project. Consultant will follow the minimum competitive selection requirements set forth in **Exhibit B**, when procuring the services of subcontractors for the Project. Subcontractors will provide acoustic consulting, drilling and borehole logging services, monitoring well installation, and sound abatement for the Project. In soliciting subcontractor bids for the Project, Consultant must condition the acceptance of any bids upon the Board’s authorization of expenditures for Phase 2. Consultant will inform Denver Water of its preferred subcontractors and obtain Denver Water’s input, although the Consultant is solely responsible for final subcontractor selection, execution of the Work, and management of the subcontractors.

Under Part 2 of the Agreement, upon the acceptance of bids, the Parties will develop a mutually acceptable written amendment to this Agreement to include the physical work and costs. Consultant will oversee the physical work and manage the subcontractors during Phase 2 of the Project and is solely responsible for all Project permitting. Consultant will also be responsible for training Denver Water staff on how to conduct water quality sampling from the monitoring well.

2. Notice to Proceed. The Board will issue a Notice to Proceed with the required Work after the effective date of this Agreement and after the Board has received satisfactory certificates of insurance as required in this Agreement, whichever is later.

3. Time of Commencement and Completion of Work. The term of this Agreement shall extend from the Effective Date as defined below to December 15, 2021. The Board shall not dictate times of performance of the Work, except that the Consultant shall commence the Work as soon as necessary after receipt of a Notice to Proceed and the physical work under Phase 2 must be completed by no later than November 30, 2021. The Consultant and the Board must agree upon any extensions of the Agreement term or completion date in a written amendment.
4. Consultant Responsibility. The Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all studies, reports and other Work performed under this Agreement. The Consultant is responsible for providing the materials, equipment, training and tools necessary for performance of the Work. The Consultant represents that all Work performed under this Agreement shall be performed with the usual thoroughness and competence and in accordance with the standards of care of the Consultant's profession prevailing in Colorado. Without additional compensation, and without limiting the Board's remedies, the Consultant shall promptly remedy and correct any errors, omissions or other deficiencies in the Work not meeting that standard of care, including any breaches of the representations in this Agreement.
5. Confidentiality of Information. The Non-Disclosure Terms and Conditions attached as **Exhibit C** are incorporated into this Agreement. At the request of the Board, Consultant shall cause its subcontractors to abide by the terms of **Exhibit C**.
6. Ownership of Work Product.
 - a. All printed material, original works of authorship, electronic documents and intellectual property produced, invented, reduced to practice, or created as a result of Work performed under this Agreement (the "Creations") (with the exception of any intellectual property rights contained therein, owned or created by the Consultant prior to the effective date of this Agreement ("Prior Works")) shall be the sole property of the Board and may not be used, sold, licensed or disposed of in any manner without prior written approval of the Board. To the maximum extent permitted by applicable law, all Creations shall be deemed works made for hire under the United States copyright laws, and all right, title, and interest in and to such work product shall vest automatically in the Board. Consultant hereby assigns and irrevocably agrees to assign in the future (when any such Creations are first reduced to practice or first fixed in a tangible medium, as applicable) to the Board all right, title and interest in and to any and all such Creations, including, without limitation, all related intellectual property rights (as to copyright, to the extent such Creations are held not to be works made for hire under applicable law). All such Creations shall be turned over to the Board upon completion of the Work. For custom-developed software, the Board shall be provided a copy of the source code.
 - b. Consultant agrees not to use, and hereby represents that Consultant has not used, in the course of the performance of the Work any Prior Works, unless such Prior Works are first disclosed in writing to the Board, and the Board consents in

writing to the use of the Prior Works, and Consultant grants a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, create derivative works of, copy, publicly display, use, sell and distribute such Prior Works as incorporated in the Work. Consultant further agrees that it shall not use or incorporate any third party works, third party inventions or open source software in the Work without prior disclosure to the Board, without provision of a valid license providing the Board with all rights necessary to use such as used or incorporated in the Work, and without approval from the Board.

- c. Consultant represents that all studies, reports and other Work performed under this Agreement are original or a license to the same has been obtained for the Board as required in this section, will perform for the purpose intended, contain no infringing intellectual property, and contain no material defects, and, if software, contain no malware or undisclosed means of access. The Consultant may retain one copy of all documents prepared under this Agreement. Any reuse of the Consultant's work product for any use other than as contemplated by this Agreement shall be at the Board's sole risk.

7. Compensation and Invoicing. The Board shall compensate the Consultant for Work performed under this Agreement as described in this paragraph. The compensation for the Consultant provided by this Agreement is entire and complete. The Consultant has not received and will not receive any other compensation in connection with this Agreement. The Consultant warrants that it has not paid or promised to pay any compensation to anyone (except Board-approved subcontractors and the Consultant's officers and employees) in order to obtain this Agreement.

- a. The Consultant will be paid an hourly rate that includes labor, payroll, all overhead expenses, and profit. Overhead expenses include charges for clerical, administrative, accounting, legal, and computer personnel and may not be billed separately. The hours billed by the Consultant shall not exceed hours actually worked on the Work, as shown in the Consultant's timekeeping records, and shall be limited to the hours actually paid to the employee for the Work. The chart included in **Exhibit A** identifies the particular persons or classes of persons who will perform Work under this Agreement and the hourly rate for each. The Consultant shall not bill the Board for persons or classes of persons not listed in **Exhibit A** or at hourly rates different from those specified in **Exhibit A**.
- b. The Consultant shall provide invoices each month for Work accomplished through the last day of the preceding month. The Consultant's invoices shall include a description of the Work performed by and the hours worked by each person for the billing period. The Consultant must submit documentation supporting the charges in the invoice, which must be consistent with this Agreement, and must include the contract number of this Agreement on each invoice.
- c. The Consultant will be paid for the following out-of-pocket costs, as long as they are approved in advance by the Board: travel expenses; long distance telephone

calls; postage; faxes; express delivery services; printing and reproduction; photocopying; materials specified in the Agreement; and subcontracted work. The Consultant shall bill for the out-of-pocket costs listed above at actual costs without markup. For any out-of-pocket costs that exceed \$200.00, the Consultant shall provide a copy of the underlying invoice, travel voucher or other document supporting the out-of-pocket cost.

- d. The total compensation under this Agreement, including out-of-pocket costs, shall not exceed \$Insert not-to-exceed amount.
8. Payment. Payments shall be based upon the Consultant's verified progress in completing the Work. Unless the Consultant has not properly performed the Work, invoices will be paid within thirty (30) days of receipt. The Board has the right to refuse to pay all or a portion of an invoice that is inconsistent with this Agreement; all undisputed portions of the invoice shall be paid. The Board may delay payment until it can verify the accuracy of the invoice, obtain releases or waivers with respect to Work covered in the invoice (and with respect to Colo. Rev. Stat. Article 26 of Title 38 if applicable), or resolve a dispute with the Consultant regarding an invoice. **The Board will not issue payments unless the Consultant has current insurance coverage in accordance with this Agreement.** Checks shall be made payable to the trade or business of the Consultant.
 9. Records and Audits. The Consultant shall at all times maintain a system of accounting records in accordance with its normal procedures, together with supporting documentation for all Work, purchases, and billings under this Agreement. The Consultant shall retain all such accounting records and documentation for at least two (2) years after final payment. The Board has the right to audit the accounting records and documentation of Consultant related to the Work at any time during the period of this Agreement and for two (2) years after final payment. The Consultant shall refund to the Board any charges determined by the Board's audit to be inconsistent with this Agreement.
 10. Changes in Work. The Board has the right to order additions, deletions, or changes in the Work at any time, so long as such changes are within the general scope of Work covered by this Agreement. Requests for material changes in the Work may be made by the Board orally or in writing; however, oral requests shall be confirmed by a written request within ten (10) business days after the oral request. If the Board directs the Consultant to proceed with a material change, the Consultant shall be paid for the change as agreed to by the parties.
 11. Independent Contractor.
 - a. The Consultant is customarily engaged in an independent trade, occupation, profession or business related to the Work, and nothing in this Agreement requires the Consultant to work exclusively for the Board during the term of the Agreement.

- b. Nothing in this Agreement shall be construed to establish the Consultant as an agent or employee of the Board for any purpose. The Consultant and its employees, agents, and subcontractors shall in no way represent themselves to third parties as agents or employees of the Board in performance of the Work.
- c. The Board shall not oversee the Work of the Consultant or instruct the Consultant on how or when to perform the Work, except that the Board and the Consultant have agreed to a completion date for the Work. The Consultant shall in all respects be an independent contractor of the Board in its performance of the Work.
- d. **The Consultant acknowledges that it is not entitled to unemployment insurance or workers' compensation benefits as a result of performance of the Work for the Board.**
- e. **The Consultant acknowledges that it is obligated and solely liable to pay federal and state income tax on any moneys earned pursuant to this Agreement, which may include federal and state income and withholding taxes, unemployment taxes, FICA taxes and workers' compensation payments and premiums applicable to this Agreement or the Work. The Consultant shall indemnify the Board for any liability resulting from nonpayment of the Consultant's obligations under this paragraph.**

12. Insurance. **PLEASE READ THIS CAREFULLY. THE CONSULTANT WILL NOT BE PAID UNLESS THE FOLLOWING INSURANCE REQUIREMENTS ARE MET.** The Consultant shall maintain the following insurance in full force and effect during the full term of this Agreement. The Consultant shall provide to the Board certificates of insurance (and renewals thereof) demonstrating that the following insurance requirements have been met.

- a. Commercial General Liability Insurance:
Commercial general liability insurance including completed operations coverage with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage. Such insurance shall include the City and County of Denver, acting by and through its Board of Water Commissioners, as additional insured and shall be primary and non-contributing with respect to any insurance or self-insurance program of the Board.
- b. Automobile Liability Insurance:
Consultant shall maintain automobile liability insurance as required by Colorado law. The Board does not require a certificate of insurance unless this subparagraph (b) requires insurance that exceeds the statutory requirements.

In addition to the statutory requirements, Consultant shall maintain automobile liability insurance with limits not less than \$1,000,000 each accident for owned,

non-owned and hired vehicles used in the performance of Work under this Agreement.

c. Professional Liability Insurance:
Professional liability insurance with limits not less than \$1,000,000 per claim covering all licensed professionals performing Work under this Agreement.

d. Workers' Compensation Insurance:
The following alternatives may be selected depending on the circumstance:

ALTERNATIVE 1:

The Consultant is located in Colorado and maintains workers' compensation insurance, as required under the laws of the State of Colorado. IF THE CONSULTANT IS A COLORADO SOLE PROPRIETOR WITH EMPLOYEES, SELECT THIS ALTERNATIVE.

ALTERNATIVE 2:

The Consultant is located outside of Colorado and does not maintain workers' compensation insurance effective in Colorado. The Consultant warrants that during the term of this Agreement it will not hire employees in Colorado or transfer employees to Colorado without maintaining workers' compensation insurance, as required by Colorado law, in full force and effect during the full term of this Agreement.

e. Other Requirements:

- 1) The Consultant's insurers shall maintain an A.M. Best rating of A-, VII or better.
- 2) All self-insured retentions or deductibles must be declared and acceptable to the Board.
- 3) Thirty (30) days' advance written notice of cancellation shall be provided to the Board, except for ten (10) days' advance written notice in the event of cancellation due to non-payment of premium.

f. Proof of Insurance:
The Consultant shall provide copies of insurance policies upon request of the Board and in redacted form if necessary to protect confidential information.

g. Other Types of Insurance:
The Board reserves discretion to accept alternative types of insurance.

13. Compliance with Laws. In performing this Agreement, the Consultant shall comply with all applicable laws, rules, and regulations, including, but not limited to, the Colorado Workers' Compensation Act, federal and state tax laws, and any applicable minimum wage requirements including Denver R.M.C. sec. 58-16, et. seq. The Consultant certifies that it has complied, and during the term of this Agreement will continue to comply, with the Immigration Reform and Control Act of 1986.

The signature of the Consultant on this Agreement: (1) certifies that the Consultant is not a natural person unlawfully present in the United States; and (2) also certifies the statements below *if this is a public contract for services as defined in Colo. Rev. Stat. § 8-17.5-101, et seq., and the Consultant utilizes subcontractors or employees in the Consultant's business.*

- a. The Consultant shall not:
 - 1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
 - 2) Enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- b. The Consultant 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 program or the department program (as defined in Colo. Rev. Stat. § 8-17.5-101, et seq.). The Consultant may not use either the e-verify program or the department program procedures to undertake preemployment screening of job applicants while this Agreement is being performed.
- c. If the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall:
 - 1) Notify the subcontractor and the Board within three days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - 2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph 1) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant 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.

- d. The Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law.
 - e. The Consultant acknowledges that in the event the Consultant violates any of the provisions of the foregoing subparagraphs a – d, the Board may terminate this Agreement for breach of contract. If this Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the Board.
14. Safety and Security. The Consultant must comply with applicable safety and occupational health standards, specifications, reporting, and any other relevant requirements. The Consultant also must check in with the Board’s Security personnel at each location, where applicable; display appropriate identification at all times while on the Board’s premises; and notify the Board’s Security personnel in writing in advance of any anticipated third-party deliveries with the name of the delivery person and the approximate time of arrival.
15. Personnel Screening. Not applicable.
16. Protection of Personal Identifying Information. Not applicable.
17. Liability. The Consultant agrees to indemnify, hold harmless and defend the Board against any liability, damages, costs, expenses, claims, injuries and losses of whatever nature arising in any way out of this Agreement, including but not limited to any expenses incurred by the Board as a result of damages to the Board’s property and any claims that the Creations, Prior Works or the Work infringe the intellectual property rights of a third party, to the extent caused by any negligent act or omission or willful misconduct of the Consultant or the Consultant’s officers, subcontractors, agents, or employees.
18. Standards of Conduct – Nondiscrimination and Respectful Workplace. The Consultant agrees not to discriminate against any Board employee, or potential subcontractor or supplier because of race, color, religion, age, national origin, gender, sexual orientation, pregnancy, military status, marital status, or disability. The Consultant further agrees not to conduct business in a manner that brings discredit to the Board or creates a hostile or disrespectful work environment for Board employees, Board customers, or other contractors performing work for the Board. The Board reserves the right at its sole discretion to terminate this Agreement if the Consultant is an individual, or to direct the Consultant to assign another employee or agent to perform the Work, if the Board has reason to believe that during the term of the Agreement the Consultant, or the assigned employee or agent engaged in activity prohibited by this section.
19. Small Business Enterprises; Minority- and Women-Owned Business Enterprises. The Board recognizes the desirability, need and importance to the City and County of Denver of encouraging the development of Small Business Enterprises (“SBEs”) and Minority- and Women-Owned Business Enterprises (“MWBEs”). The Consultant agrees to make a good faith effort to involve SBEs and MWBEs in the Work if and when the opportunity arises.

20. Environmental Compliance. Denver Water strives to adhere to all applicable environmental laws, regulations, and policies. In addition, it utilizes an Environmental Management System to monitor and improve its environmental performance. In the performance of the work, Consultant must comply with all applicable environmental laws, regulations, ordinances, specifications, reporting requirements, and any other relevant requirements. Consultant shall also require its subcontractors to comply with this paragraph. All drilling fluids from the Project shall be removed from the Project site and managed and disposed of in compliance with State and Federal regulations.
21. Acceptance Not Waiver. The Board's approval of studies, drawings, designs, plans, specifications, reports, computer programs and other work or materials does not in any way relieve the Consultant of responsibility for the technical accuracy of the Work. The Board's approval or acceptance of, or payment for, any Work is not a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
22. Termination or Suspension. The Board reserves the exclusive right to terminate or suspend all or any portion of the Work by giving fourteen (14) days' written notice to the Consultant. If any portion of the project shall be terminated or suspended, the Board shall pay the Consultant equitably for all Work properly performed pursuant to this Agreement. If the project is suspended and the Consultant is not given an order to resume work within sixty (60) days from the effective date of the suspension, this Agreement will be considered terminated. Upon termination, the Consultant shall immediately deliver to the Board any documents then in existence that have been prepared by the Consultant pursuant to this Agreement and that have been paid for by the Board.
23. Default. Every term and condition of this Agreement is a material element of this Agreement. In the event either party should fail or refuse to perform according to the material terms of this Agreement, such party may be declared in default by the other party by a written notice.
24. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) days within which to correct, or commence correcting, the default. In the event that the default has not been corrected or begun to be corrected, or the defaulting party has ceased to pursue the correction with due diligence, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. In the event the Consultant fails or neglects to perform the Work in accordance with this Agreement, the Board may elect to correct such deficiencies and charge the Consultant for the full cost of the corrections. The parties agree that no profits that the Consultant might realize from this or other work are within the scope of their agreement. They further agree that the Consultant waives any right to recover and shall not be compensated for any such lost profits or other consequential damages arising from a breach by the Board.

25. Force Majeure. The parties shall not be responsible for any failure or delay in the performance of any obligations under this Agreement solely caused by the following events: natural disaster, flood, fire, war, or public enemy. Events not listed in the preceding sentence, including, but not limited to, epidemics such as the current COVID-19 pandemic, economic conditions, and labor strikes, shall not be considered force majeure events. As a condition precedent to invoking this force majeure clause, the invoking party must provide timely written notice detailing the reasons why the force majeure event has made performance under the original contract terms impossible, and the invoking party must immediately take all reasonable measures to mitigate or avoid damages to the other party.
26. Assignment and Subcontracts. The Consultant may not assign this Agreement or any right or liability of this Agreement or enter into any subcontract or amend any subcontract related to this Agreement without prior written consent of the Board. **Any subcontract must include language similar to the Records and Audits paragraph of this Agreement, requiring records to be adequate and available for Board audit.** This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns. This Agreement is intended to benefit only the parties, and neither subcontractors nor suppliers of the Consultant nor any other person or entity is intended by the parties to be a third-party beneficiary of this Agreement.
27. Severability. If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement will remain enforceable to the fullest extent permitted by law.
28. Venue and Governing Law. This Agreement shall be deemed performable in the City and County of Denver, notwithstanding that the parties may find it necessary to take some action outside the City and County. The sole venue for any dispute resulting in litigation shall be in the District Court in and for the City and County of Denver. This Agreement shall be governed by and construed under the laws of the State of Colorado.
29. Notice and Contact. The parties shall contact the persons listed below for all matters related to administration of this Agreement. All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other party; or (b) seven (7) days after posting in the United States mail, first-class postage prepaid, properly addressed as follows; or (c) when sent by e-mail. If notice is provided by e-mail, the notifying party must follow up with a hard copy of the notice sent by United States mail; however, the notice will be effective as of the original e-mail date.

If to the Consultant:

Insert name of the Consultant
Insert mailing address of the Consultant
Insert e-mail address of the Consultant

If to the Board:

Mike King, Chief External Affairs Officer
Denver Water Department
1600 West 12th Avenue
Denver, Colorado 80204
Mike.king@denverwater.org

or such other persons or addresses as the parties may have designated in writing.

30. Charter of the City and County of Denver. This Agreement is made under and conformable to Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System. The Charter provisions are incorporated by this reference and supersede any apparently conflicting provisions otherwise contained in this Agreement.
31. Governmental Immunity Act. The parties understand and agree that the Board is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.
32. Entire Agreement. This Agreement constitutes the entire agreement between the Board and the Consultant and replaces all prior written or oral agreements and understandings with regard to the subject matter herein. It may be altered, amended, or repealed only by a duly executed written instrument. The terms of this Agreement shall control in the event of any conflict between the terms of the Agreement and any documents or exhibits attached or incorporated into the Agreement.
33. Effective Date. This Agreement shall become effective on the date it is fully signed by the Board.
34. Electronic Signatures and Records. The Consultant consents to the use of electronic signatures by the Board. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically in the manner specified by the Board. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
35. Special Provisions.
 - a. Performance and Other Bonds: At the time Work is commenced pursuant to this Agreement, the Consultant shall furnish Performance and Payment Bonds, each in an amount at least equal to the value of the Work, as security for the faithful performance and payment of the Consultant's obligations under the Agreement.

These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Laws or Regulations or by any and all requirements imposed by the Agreement. Bonds shall be in the forms prescribed by Laws or Regulations, executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and rated "A-" or better by A. M. Best Company. Bonds signed by an agent shall be accompanied by a certified copy of the authority to act. The Proposal package shall include proof of A. M. Best ratings. The Consultant shall use the latest versions of forms EJCDC C-610 and EJCDC C-615 for the contract. If the Surety on any Bond furnished by the Consultant is declared bankrupt, becomes insolvent, its right to do business is terminated in any state where any part of the Work is located, or it ceases to meet the requirements of this Agreement, the Consultant shall, within five (5) days thereafter, substitute another Bond and Surety, both of which must be acceptable to the Board.

THEREFORE, the parties have executed this Agreement. This Agreement must have the signature of an authorized representative of the Consultant.

ATTESTED:

By: _____
Secretary

**CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER
COMMISSIONERS**

By: _____
President

DATE: _____

APPROVED:

By: _____
Chief External Affairs Officer

REGISTERED AND
COUNTERSIGNED:
CITY AND COUNTY OF DENVER

By: _____
Timothy M. O'Brien, CPA
Auditor

APPROVED AS TO FORM:

By: _____
Office of General Counsel

THIS AGREEMENT IS ACCEPTED BY:

CONSULTANT: Insert name of the Consultant

By execution, signer certifies s/he is authorized to bind the Consultant to the terms of this Agreement.

By: _____

DATE: _____

TITLE: _____
[for other than individual]

For Board records only, Consultant shall check the applicable box(es) below:

- Consultant is a Small Business per federal SBA guidelines
- Consultant is not a Small Business per federal SBA guidelines
- Consultant is a Minority-owned Business Enterprise (MBE) and/or Women-owned Business Enterprise (WBE) per _____ (name of certifying entity)
- Consultant is not an MBE or WBE
- Consultant elects not to answer this question

If Consultant is an MBE and/or WBE, Consultant must submit evidence of certification from an agency such as the City and County of Denver or the Mountain Plains Minority Supplier Development Council.

EXHIBIT A SCOPE OF WORK

The Consultant shall perform the following tasks:

Insert description of the scope of work, reiterate work requirements from RFP, or attach the scope of work from the Consultant's proposal.

Note, the scope of work shall include a detailed description of the Project, and Consultant's tasks, including procurement of the subcontractors, and management of the subcontractors and the project from beginning to end. The scope will include Consultant's personnel designated to the project, hourly rates, and overall budget for the project.

EXHIBIT B

Minimum Standards for Competitive Field Contractor Procurement

Consultant will conduct competitive procurement processes for each of the contractors in Part 2 of the project according to the following standards. These standards are intended to, to the extent possible, permit and encourage fair and open competition, increase participation by minority-owned and women-owned business enterprises and small business enterprises (MWBE), and provide for high value services to Denver Water.

- 1) The goal of using a competitive-selection process is to find the best value for Denver Water.
- 2) Procurement of goods and/or services from an external source must satisfy the requirements of the Board's SBE and MWBE Program Resolution to prevent discrimination and the effects of discrimination, promote competition in bidding, and to enhance the economic growth of such businesses in the Denver metropolitan area.
- 3) Consultant will develop an invitation for bid and proposed scope of services for each contractor sought, and provide Denver Water with an opportunity to review and comment before finalizing.
- 4) Consultant will establish the appropriate contractor specifications in accordance with industry standards for the services and will, as necessary, obtain outside legal advice on terms and conditions to include in the specifications and contract documents since Consultant will procure the contractors.
- 5) Consultant will organize and assemble bidding documents and coordinate with appropriate Denver Water staff to publish on Denver Water's website and on the QuestCDN platform to solicit bids. Any desired exception to this solicitation standard must be reviewed and approved by Denver Water. Advertisements shall specify the services to be purchased or refer to the standards and/or specifications established, and shall state the amount of the bond, if any, required. If public advertisement is not practicable, Denver Water and the Consultant will establish procedures that admit genuine competition from at least three responsible bidders or proposers dealing in the goods and/or services required. All bids or proposals in response to advertisement or request by Consultant shall be submitted as specified in the solicitation.
- 6) Consultant will develop selection criteria for each contractor for review by Denver Water (at least a two-week review period). Selection criteria is intended to ensure contractors have appropriate qualifications, competence, and experience, understand the purposes and goals of the project, ensure contractors meet the SBE and MWBE goals, and allow selection of the contractor providing the best value or that is the most advantageous to Denver Water considering cost, service, quality, delivery, reliability, and other appropriate criteria listed in the bid documents.

- 7) All bids or proposals in response to advertisement shall be submitted as specified in the solicitation.
- 8) Bids and quotes shall be evaluated and awarded based on the bid or quote that is deemed the most advantageous to Denver Water. Neither the Consultant nor Denver Water are bound to accept the lowest-priced bid or quote if it is not in the best interest of the Denver Water. All bids or proposals may be rejected.
- 9) Consultant will evaluate and rate bids and prepare bid tabulations and analysis memoranda documenting the contractor selection recommendation.
- 10) Procurement of services from a successful bidder will be conditioned upon the Board's subsequent authorization of funds.
- 11) Each bid or proposal, with the name of the bidder or proposer, shall be recorded, and each record, with the successful bid or proposal, if any, indicated, shall be retained in accordance with the Records Management Procedures and Standards Manual and Records Retention Schedule and subject to public inspection under the Colorado Open Records Act, unless the bidder/proposer clearly designates any documents submitted with its bid or proposal as proprietary or confidential.
- 12) Consultant shall assemble all documentation of SBE and MWBE goal compliance and submit to Denver Water's Project Manager.
- 13) No requests to inspect competitor bids or proposals will be considered until an award has been made. It is permissible to present bid tabulations to all participating bidders.

EXHIBIT C

NON-DISCLOSURE TERMS AND CONDITIONS

1. The Board is the owner of certain confidential and/or security-sensitive information relating to its water system and components thereof ("Confidential Information"), which the Board represents is not subject to public inspection under C.R.S. § 24-72-201 *et. seq.*, and which the Board has taken and continues to take steps to protect as confidential and restricted.
2. The parties recognize that it may be necessary to exchange information, including but not limited to Confidential Information, between the Board and Consultant, for the sole and exclusive purpose of the Work to be performed under their Insert Contract or Agreement or Task Order Agreement Insert main agreement's contract number ("Agreement"). These Non-Disclosure Terms and Conditions are incorporated into the Agreement. Consultant acknowledges that it may exchange Confidential Information with a contractor working on behalf of the Board and that these Non-Disclosure Terms and Conditions also will apply to such Confidential Information.
3. The Confidential Information includes any paper or electronic drawings, documents, files, logs, data, created in performing the Work under Exhibit A to the Agreement or that the Board provides to Consultant under the Agreement. The parties shall use their best efforts to label or identify any information provided by either Party under the Agreement as confidential in order to be protected under these Non-Disclosure Terms and Conditions.
4. The Board, in its sole discretion, may provide to Consultant the Confidential Information in the form of the Board's choosing.
5. If the Board provides or Consultant requests the Confidential Information in a format requiring particular software, it is understood that Consultant will secure at its sole cost any and all necessary software licenses, authorizations or other intellectual property rights for the transfer and use of the Confidential Information.
6. As part of these Non-Disclosure Terms and Conditions, the Board may permit Consultant to visit one or more Board facilities according to a schedule to be determined by the Board. Consultant is prohibited from taking any pictures or video or making any electronic recordings of any kind during its visit(s) to the Board's facilities without the prior approval of the Board's site or area supervisor. Consultant acknowledges that it may learn information about and receive documentation about the Board's facilities during the visit(s), and Consultant agrees that such information and documentation will be considered Confidential Information under these Non-Disclosure Terms and Conditions.
7. Consultant shall hold and use the Confidential Information only for the purpose of performing the Work required by the Agreement. Consultant shall limit disclosure of the Confidential Information to only its employees and subcontractors who have a need to know the Confidential Information. Consultant will not use or derive any direct or indirect benefit from any information provided by the Board, or from any part thereof, without the prior written consent of the Board; this prohibition will survive the termination of these Non-Disclosure Terms and Conditions. Consultant shall take reasonable steps to ensure that

anyone to whom it provides the Confidential Information complies with these Non-Disclosure Terms and Conditions.

8. Each employee or subcontractor of Consultant identified as having a need to know the Confidential Information shall be required to execute an original of these Non-Disclosure Terms and Conditions and will be bound to uphold them to the extent applicable to the particular employee or subcontractor. Each employee or subcontractor executing these Non-Disclosure Terms and Conditions agrees not to use or derive any direct or indirect benefit from any information provided by the Board, or from any part thereof, without the prior written consent of the Board; this prohibition will survive the termination of these Non-Disclosure Terms and Conditions. Prior to distribution of the Confidential Information, Consultant shall provide to the Board copies of all Non-Disclosure Terms and Conditions executed by Consultant's employees and subcontractors, as well as a master list of the subcontractors, their respective functions, the reason for their need to know the Confidential Information, and a summary list of the Confidential Information to be provided to them.
9. Consultant shall not be liable to the Board for disclosure of any information, including but not limited to Confidential Information, if the information:
 - a. Was in the public domain at the time it was disclosed, or
 - b. Becomes part of the public domain without breach of these Non-Disclosure Terms and Conditions, or
 - c. Is obtained by Consultant from a third party that is lawfully in possession of such information and is not in violation of any contractual or legal obligation to the Board or other third party with respect to such information, or
 - d. Is disclosed with the prior written approval of the Board, or
 - e. Was independently developed by Consultant outside of the Agreement, or
 - f. Is disclosed pursuant to the provisions of a court order or subpoena, provided that the Board has had an opportunity to object or intervene in the matter.
10. These Non-Disclosure Terms and Conditions shall supersede the provisions of any inconsistent language that may be affixed to any information provided by the Board or by Consultant, and the inconsistent provisions of any such language shall be without any force or effect during the term of these Non-Disclosure Terms and Conditions.
11. Confidential Information and any other information or materials provided by the Board to Consultant shall be returned to the Board, or to the Board's contractor that supplied the information, (1) at such time as it is no longer required for the purposes of the Agreement or (2) upon request of the Board at any time. Additionally, upon request Consultant will provide an affidavit of destruction of any copies or extracts of the Confidential Information in whole or in part, or of other material or formats that contain the Confidential Information.
12. If the Agreement has terminated or expired but Consultant remains in possession of any information that would have been protected under these Non-Disclosure Terms and Conditions, Consultant will treat that information or any part thereof, as well as any other information received from the Board under the Agreement, as if these Non-Disclosure Terms and Conditions remain in effect.
13. If Consultant loses or makes unauthorized disclosure of any of the Board's information protected by these Non-Disclosure Terms and Conditions, it shall notify the Board

immediately and take all steps reasonable and necessary to retrieve the lost or improperly disclosed information.

14. The standard of care for protecting information exchanged under these Non-Disclosure Terms and Conditions will be at least that degree of care the receiving party uses to prevent disclosure, publication or dissemination of its own proprietary information, provided that degree of care is at least reasonable.
15. The party receiving information under these Non-Disclosure Terms and Conditions shall not be liable for the inadvertent or accidental disclosure of such information if such disclosure occurs despite the exercise of at least the same degree of care as the receiving party normally takes to protect its own proprietary information, provided that degree of care is at least reasonable.
16. If either party receives a request by a third party, under the Colorado Open Records Act (C.R.S. § 24-72-201 et. seq.) or otherwise, to provide any information it has received pursuant to these Non-Disclosure Terms and Conditions or to the Agreement, it shall treat all such information as confidential or otherwise protected from disclosure, unless it is permitted to be disclosed under these Non-Disclosure Terms and Conditions. In the event of such a request, the party that received the request shall notify the other party in writing as soon as reasonably possible. The Board shall not be liable for disclosure of any information received from Consultant if such disclosure is required by the Colorado Open Records Act.
17. In providing any information to Consultant, the Board makes no warranty or representations, either express or implied, as to the information's adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such information, nor shall the Board incur any liability or obligation whatsoever by reason of providing such information.
18. These Non-Disclosure Terms and Conditions contain the entire agreement relative to the protection of information to be exchanged between the Board and Consultant for purposes of the Agreement and supersede all inconsistent prior or contemporaneous oral or written understandings and agreements regarding this issue. These Non-Disclosure Terms and Conditions shall not be modified or amended, except by an amendment to the Agreement executed by the Board and Consultant.
19. Nothing contained in these Non-Disclosure Terms and Conditions, by express grant, implication, estoppel or otherwise, shall create in Consultant any ownership, right, title, interest, or license in or to the documents, information, inventions, patents, technical data, computer software, or software documentation of the Board.
20. Notwithstanding that the Board and Consultant may exchange information for the purposes of the Agreement, neither party waives any claim that the information it provides is privileged, proprietary, and/or confidential.
21. Nothing contained in these Non-Disclosure Terms and Conditions shall grant to Consultant the right to make commitments of any kind for or on behalf of the Board without the prior written consent of the Board.

22. Nothing contained in these Non-Disclosure Terms and Conditions shall be construed as restricting the Board's right to restrain use or dissemination of the Board's information in accordance with applicable federal, state, or local law or regulation, or at common law.

Each employee and/or subcontractor of Consultant identified as having a need to receive the Confidential Information shall execute an original of these Non-Disclosure Terms and Conditions. Consultant shall provide the executed originals to the Board.

To be completed by an employee of Consultant:

I, _____, an employee of Consultant, agree to these Non-Disclosure Terms
(Print name legibly)
and Conditions.

Signature: _____ Date: _____

To be completed by a subcontractor of Consultant:

I, _____, a subcontractor of Consultant, agree to these Non-Disclosure
(Print name legibly)
Terms and Conditions.

Signature: _____ Date: _____

By execution, signer certifies that s/he is authorized to accept and bind the subcontractor of Consultant to these Non-Disclosure Terms and Conditions.

