Project Description
The Foothills Tunnel Remotely Operated Vehicle (ROV) Inspection will utilize a tethered and unmanned submersible vehicle to inspect Denver Water’s Foothills Tunnel using video and sensor equipment. The inspection will be performed while the tunnel is watered, allowing Denver Water to assess the tunnel condition in a pressurized and normal state. The tunnel will not be operational during the inspection, and water will not be flowing inside the tunnel. The inspection of the tunnel is anticipated to occur during a scheduled tunnel outage from November 2, 2022 to December 14, 2022.

Background and History
The Foothills Tunnel, or Conduit No. 26 Tunnel, is a 3.4-mile long (17,935 feet), 126-inch inside diameter, concrete-lined tunnel that transports raw water from Strontia Springs Reservoir to the Foothills Water Treatment Plant and was completed in 1983. The tunnel was excavated using drill-and-blast and machine bore methods and was constructed with a 9-inch-thick concrete liner with periodic steel rib and strut supports. An additional 3/8-inch-thick steel liner was installed in the easternmost 3,080 feet of tunnel between the surge chamber and the East Portal.

The 2018 dewatered inspections of the Foothills Tunnel indicated that the tunnel appears to be in overall satisfactory condition; however, some defects were identified that require further inspection. Such defects included surrounding soil and/or rock material piping into a check valve port and inward bulging of the steel liner that caused portions of the cement mortar lining to spall.

The tunnel has never been inspected in a pressurized state. This project is intended to obtain more information about the tunnel condition and help clarify future repair scope.

Project Objectives
The following specific project objectives have been identified:

- Inspection defects identified in the 2014 and 2018 Inspection Reports and identify any additional defects. Inspection shall include but not be limited to the steel liner bulges and up to 8 check valves.
- Quantify flow into or out of the tunnel at up to 15 locations, which may include check valves, bulges, and/or other identified defects.
- Identify potential for large voids behind the concrete liner and steel liner, specifically including the location of the defected piping check valve observed in 2018, at approximately 1,609 feet upstream from the East Portal.
- Observe the tunnel in a pressurized (i.e., watered) condition to assess impacts of dewatering/depressurizing.
- Better understand the current condition and rate of deterioration of the concrete liner and the steel liner.
- Establish a baseline condition for comparison with future inspections. This may include point cloud data sets, video, and/or other methods.

Consultant Scope of Services
The project includes performing an underwater inspection of the Foothills Tunnel using a tethered, unmanned ROV. The ROV will be outfitted with cameras, sonar, dye tracing, and/or other equipment to allow for a complete assessment of the tunnel and liner condition. Deployment of the ROV will occur at the top of the Strontia Springs Intake Tower through a 3-foot by 4-foot access hatch. The 12-ton capacity Gantry Crane already in place on the Intake Tower will be available for use by the Contractor to lower and raise the ROV into and out of the tunnel through the hatch. The tunnel is available for inspection from November 2, 2022 to December 14, 2022, which coincides with the scheduled tunnel outage. A preferred inspection window of November 3, 2022 to November 18, 2022, has been identified, but there is flexibility
in this window as long as the inspection occurs within the noted tunnel outage window and all
deliverables are received in accordance with the Project Schedule.

The Consultant will present the collected data to the Denver Water (Owner) in an understandable format
to aid in the assessment of the tunnel condition.

**Consultant Qualifications**

The Consultant shall demonstrate a minimum of 5 years of ROV inspection experience that is similar to
the work required for this project and shall submit information describing at least 3 similar ROV
inspections. The Consultant shall submit information and/or specifications for the ROV to be used that
show the ROV is capable of performing the inspection in the conditions described herein. Consultant’s
proposal shall include a project team organizational chart and provide the resumes of key team members.

**Owner Responsibility**

The Owner will provide to the Consultant all available relevant information to aid in the inspection. Such
information includes but is not limited to:

- Project objectives
- 2014 and 2018 Inspection Reports
- As-built detailed drawings
- Review comments within agreed upon schedules
- Surveys including design surveys and as-built elevations
- Access to the Intake Tower
- Use of the Intake Tower Gantry Crane (to be operated by Denver Water)

**Project Assumptions**

The following assumptions were made in the development of this Scope of Work:

- Professional Services Agreement, Bid Forms, etc., will be provided by the Owner.
- 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 tunnel will be pressurized (i.e., watered) and not operational during the inspection. There will
  be no flow in the tunnel except for minor leakage or seepage into or out of the tunnel.
- The tunnel will be subject to full reservoir head up to elevation 6,002 feet, or approximately 172
  feet of head (East Portal Invert Elevation 5,830.04 feet).
- The Intake Tower will be the only point of access for the tunnel inspection.
- Denver Water is not responsible for retrieval of lost equipment in the tunnel and all equipment
  must be retrieved to avoid damage to downstream facilities.
Existing Resources:

The Foothills Tunnel Remotely Operated Vehicle Inspection, and Prioritization may be requested. The Consultant will be required to sign and adhere to Denver Water’s Non-Disclosure Agreement. Please sign and submit the Non-Disclosure Agreement which can be found in Exhibit A via e-mail to brad.piede@denverwater.org.

Project Schedule

The Owner may elect to follow the proposals with a formal questionnaire and/or interview to assist with proposal evaluation. Final selection of a Consultant will be based upon the selection criteria detailed on page 7.

The anticipated Project Schedule is summarized as follows:

- May 19, 2022 Request for Proposals issued to Consultants
- May 26, 2022 Mandatory Pre-Proposal Video Conference
- June 2, 2022 Final Written Questions Due from Proposers
- June 23, 2022 Proposals Due
- July 11 to July 15, 2022 Consultant Interviews (if needed)
- July 18, 2022 Selected Consultant Recommendation
- August 10, 2022 Notice to Proceed Issued to Selected Consultant
- November 2 to December 14, 2022 Foothills Tunnel Outage
- November 3 to November 18, 2022 Preferred Inspection Window
- December 9, 2022 Draft Inspection Report Completion
- December 23, 2022 Denver Water Inspection Report Review Comments
- January 31, 2023 Final Inspection Report Completed
- January 31, 2023 Project Complete

Proposals shall include a detailed schedule with any deviations from the Project Schedule clearly identified.

Any requests for clarification and/or additional information regarding this Request for Proposals (RFP) shall be submitted in writing via e-mail to Brad Piede at (brad.piede@denverwater.org) or during the mandatory Pre-Proposal Video Conference. The Pre-Proposal Video Conference will be held on Microsoft Teams on May 26, 2022, at 10:30 a.m. MST. Consultants are required to sign a Non-Disclosure Agreement (NDA) prior to attending the meeting. Please sign the NDA in Exhibit A and submit via e-mail upon receipt of the signed NDA. On site pre-proposal meetings can be arranged upon request after the mandatory video conference. Written requests for interpretation, clarification and/or additional information must be received no later than Thursday, June 2, 2022.
Scope of Services

Task 1 – Project Management and Administration

Task 1.1: General Project Management

Time for this task is allocated to the Consultant Project Manager to oversee and administer the Contract. Includes general project management and contract administration.

- Pre-Inspection meeting and other project progress meetings. Plan on a 2-hour virtual meeting to review inspection logistics and details. Plan on minimum monthly virtual progress meetings with Denver Water Project Manager between contract award and inspection.

Task 2 – Tunnel ROV Inspection

Task 2.1: Inspection Plan

Develop and submit an Inspection Plan that will document key duties, personnel, logistics, and information required by the Consultant Inspection Team to execute a quality inspection within the schedule and budget. The key elements of the Inspection Plan are described as follows:

- Project goals, objectives, and critical success factors, and details outlining how the inspection process will achieve these
- Inspection Team members, roles, and responsibilities, including Denver Water personnel and support required to complete the work
- Inspection schedule
- ROV insertion and retrieval process
- Communications plan
- Safety Plan
- Risk management plan
- QA/QC plan
- Project documentation plan

Plan on a 2-week review period for Denver Water to review the Draft Inspection Plan. Final Inspection Plan shall be completed at least 1 week prior to inspection.

Deliverables:

- Draft Inspection Plan
- Final Inspection Plan

Task 2.2: Tunnel ROV Inspection

Tunnel ROV Inspection includes the following activities:

- Provide an ROV furnished with all necessary equipment and data collection sensors to execute the work
- Mobilization and demobilization of ROV and related equipment
- Tunnel inspection

Task 3 – Inspection Reporting

Task 3.1: Inspection Data Review Meeting

Hold a meeting to discuss findings and data obtained during the inspection and other pertinent data and information that should be presented in the Inspection Report. The meeting will help the Owner understand the data acquired during inspection and outline the contents of the Inspection Report and should help streamline the Inspection Report development and review process. The meeting will also help understand the format of raw data collected and how it can be used in the future by Denver Water.
Deliverables:
- Meeting notes
- Action Item Summary
- Raw data collected during the inspection in a usable format to Denver Water.

Task 3.2: Inspection Report

Prepare an Inspection Report that summarizes the inspection process and data collected during the inspection:

- Report shall document the date, time, procedures, conditions, and data collection process(es) during the actual tunnel inspection.
- Report shall highlight significant findings discussed in the Inspection Data Review Meeting. Highlighted findings shall include figures and/or other visual aids to help the Owner understand the data.
- All data collected during the inspection shall be made available to the Owner via downloadable medium and in an electronic format suitable to the Owner.

Plan on a 2-week review period for Denver Water to review the Draft Inspection Report.

Deliverables:
- Draft Inspection Report
- Final Inspection Report
Proposal Requirements

The proposal shall outline the Consultant’s Scope of Services, which shall include, at a minimum, the criteria set forth within this RFP as well as the Consultant’s approach to administering and completing the project. A detailed project approach assists the Owner 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 descriptions of any unique solutions, equipment, and sensor arrays, and clearly identified assumptions.
- Tailored 2-page resumes, including projects similar in nature and complexity to the Foothills Tunnel ROV Inspection 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 Consultant may be subject to a monetary penalty.
- A manpower labor estimate (work breakdown structure) by labor type/hours for the below listed major project phases and tasks provided under Scope of Services. Include the corresponding hourly rates (an 11-inch by 17-inch page size for the work breakdown structure is acceptable if needed).
  - Task 1: Project Management and Administration
    - Task 1.1: General Project Management
  - Task 2: Tunnel ROV Inspection
    - Task 2.1: Inspection Plan
    - Task 2.2: Tunnel ROV Inspection
  - Task 3: Inspection Reporting
    - Task 3.1: Inspection Data Review Meeting
    - Task 3.2: Inspection Report
- A detailed schedule tied to the project approach and with any deviations from the Project Schedule included herein clearly identified.
- A written statement regarding the Consultant’s eligibility to perform the work without any conflict(s) of interest.
- Proposals shall be limited to 8 pages not including resumes (a double-sided page is counted as 2 pages).
Selection Criteria

The Owner will review the proposals and make a selection based on best value to Owner while considering the following criteria:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Standard</th>
<th>Weighting Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Personnel Qualifications</td>
<td>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?</td>
<td>2</td>
</tr>
<tr>
<td>Firm Qualifications</td>
<td>Does the firm have the appropriate support capabilities to meet the demands of the project? Has the firm previously done projects of this type and scope?</td>
<td>1</td>
</tr>
<tr>
<td>Proposed Approach, Project Plan, and Schedule</td>
<td>Does the proposal show an understanding of the project objectives and the results desired from the project?</td>
<td>4</td>
</tr>
<tr>
<td>Cost and Work Hours</td>
<td>Do the work hours presented accurately reflect the level of effort required to complete the project?</td>
<td>3</td>
</tr>
</tbody>
</table>

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 weighting factor to give a weighted criteria score. The 4 weighted criteria scores will be summed to produce 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 the Owner once submitted.

- Proprietary or Confidential Information:
  - Proposers acknowledge that Denver Water may be required to disclose any or all 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.

A PDF version of the Consultant’s proposal shall be uploaded to the Dropbox folder at https://www.dropbox.com/request/fduBxmLlhvNiv0frT6oV by 10:00 a.m. MST on June 23, 2022. In addition, a PDF version of the Consultant’s proposal with intellectual or proprietary property redacted shall be uploaded to the same location. Please contact Brad Piede via e-mail at brad.piede@denverwater.org or by phone at 303-628-6756 with requests for clarification and/or additional information, or with questions regarding proposal submission in response to this RFP.
Terms for this Proposal

Addenda

• In the event that it becomes necessary to revise, change, clarify, provide additional information about, and/or cancel this RFP, an addendum will be placed online at https://www.denverwater.org/contractors/bid-and-contract-opportunities. It is the sole responsibility of the Proposer to acknowledge all addenda in its proposal.

Withdrawal or Modification of Proposals

• Proposals may be withdrawn or modified by Proposers prior to the proposal due date, but only upon written request. After the proposal due date, Denver Water will not return proposals and/or other information supplied to Denver Water. After the proposal due date, if Denver Water identifies a defect in the proposal that could be cured, Denver Water may request the Proposer to supplement their proposal with corrections as deemed necessary by Denver Water.

Right to Negotiate

• Denver Water may select 1 or more proposals and may negotiate any and all elements of a proposal if deemed to be in the best interest of Denver Water.

Attachments

Exhibits

Exhibit A – Proposer Non-Disclosure Agreement

Exhibit B – Sample Consultant Agreement
EXHIBIT A
Proposer Non-Disclosure Agreement
NON-DISCLOSURE AGREEMENT

This is an Agreement between Bidder, identified below, and the City and County of Denver, acting by and through its Board of Water Commissioners ("Board").

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 for the Board to provide information, including but not limited to Confidential Information, to Bidder for the purpose of preparing a bid or proposal for the Foothills Tunnel Remotely Operated Vehicle Inspection and potentially for Bidder to perform the work required by the Contract. Bidder acknowledges that it may receive Confidential Information from a contractor working on behalf of the Board and that this Agreement also will apply to such Confidential Information.

3. The Confidential Information includes any reports, spreadsheets, or tools created for the Foothills Tunnel Remotely Operated Vehicle Inspection that the Board provides to Bidder before or during the term of the Contract, as well as any of the above items developed by Bidder for the Board during the term of the Contract. Any other information provided by either party shall be labeled as or identified as confidential in order to be protected under this Agreement.

4. The Board, in its sole discretion, may provide to Bidder the Confidential Information in the form of the Board's choosing.

5. If the Board provides or Bidder requests the Confidential Information in a format requiring particular software, it is understood that Bidder 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 this Agreement, the Board may permit Bidder to visit one or more Board facilities according to a schedule to be determined by the Board. Bidder 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. Bidder acknowledges that it may learn information about and receive documentation about the Board’s facilities during the visit(s), and Bidder agrees that such information and documentation will be considered Confidential Information under this Agreement.
7. Bidder shall hold and use the Confidential Information only for the purposes of preparing a bid or proposal for the Contract, if Bidder so chooses, and for performing the work required by the Contract if selected as the successful bidder. Bidder shall limit disclosure of the Confidential Information to only its employees and subcontractors who have a need to know the Confidential Information. Bidder 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 this Agreement. Bidder shall take reasonable steps to ensure that anyone to whom it provides the Confidential Information complies with the terms of this Agreement.

8. Bidder 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 this Agreement, or
   c. Is obtained by Bidder 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 Bidder, 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.

9. The provisions of this Agreement shall supersede the provisions of any inconsistent language that may be affixed to any information provided by the Board, and the inconsistent provisions of any such language shall be without any force or effect during the term of this Agreement.

10. Confidential Information and any other information or materials provided by the Board to Bidder 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 described in this Agreement or (2) upon request of the Board at any time. Additionally, upon request Bidder 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.

11. If Bidder loses or makes unauthorized disclosure of any of the Board’s information protected by this Agreement, it shall notify the Board immediately and take all steps reasonable and necessary to retrieve the lost or improperly disclosed information.

12. The standard of care for protecting Board information provided to Bidder will be at least that degree of care Bidder uses to prevent disclosure, publication or dissemination of its own proprietary information, provided that degree of care is at least reasonable.

13. Bidder shall not be liable to the Board for the inadvertent or accidental disclosure of any of the Board’s information protected by this Agreement if such disclosure occurs despite the exercise of at least the same degree of care as Bidder normally takes to protect its own proprietary information, provided that degree of care is at least reasonable.
14. If Bidder 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 this Agreement, it shall treat all such information as confidential or otherwise protected from disclosure, unless it is permitted to be disclosed under this Agreement. In the event of such a request, Bidder shall notify the Board in writing as soon as reasonably possible.

15. In providing any information under this Agreement, 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.

16. This Agreement contains the entire agreement relative to the protection of information to be provided by the Board for the purposes described in this Agreement and supersedes all inconsistent prior or contemporaneous oral or written understandings and agreements regarding this issue. This Agreement shall not be modified or amended, except by an amendment executed by the Board and Bidder.

17. Nothing contained in this Agreement, by express grant, implication, estoppel or otherwise, shall create in Bidder 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.

18. Notwithstanding that the Board may provide information for the purposes described in this Agreement, the Board does not waive any claim that the information it provides is privileged, proprietary, and/or confidential.

19. Nothing contained in this Agreement shall grant to Bidder the right to make commitments of any kind for or on behalf of the Board without the prior written consent of the Board.

20. Nothing contained in this Agreement 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.

21. Nothing contained in this Agreement shall require Bidder to submit a bid or proposal to the Board for the Contract.

22. In the event the Board selects Bidder for the Contract, this Agreement shall remain in effect for the term of the Contract at a minimum and, additionally, for as long as the Bidder is in possession of the Board’s information that is protected by this Agreement. In the event the Board does not select Bidder for the Contract, this Agreement shall remain in effect for as long as the Bidder is in possession of the Board’s information that is protected by this Agreement.

23. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado with venue for any legal action in the District Court for the City and County of Denver.
To be completed by Bidder:

Name of Bidder: __________________________________________ (Print name legibly)

By execution below, signer certifies that s/he is authorized to accept and bind Bidder to the terms of this Agreement.

By: ________________________________ Date: __________________________

Title: ________________________________
EXHIBIT B
Sample Consultant Agreement
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 Consultant Name ("Consultant"), whose address is Consultant 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 (the "Work"). The Work specifically includes any and all deliverables provided to the Board under this Agreement. Generally, the Consultant will provide this description of work.

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 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, if required by this Agreement, or else after the effective date of this Agreement. The Consultant shall complete the Work no later than this date. The Consultant and the Board must agree upon any extensions of the 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 B are incorporated into this Agreement. The Consultant shall retain in strictest confidence all information furnished by the Board and the results of any reports or studies conducted as a result of this Agreement, along with all supporting work papers and any other substantiating documents. The
Consultant shall not disclose such information to others without the prior written consent of the Board, except as required by law.

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 following chart 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 below or at hourly rates different from those specified below.

   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.

   a. The total compensation under this Agreement shall not exceed $0.00. There are no reimbursable costs associated with this Agreement.

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 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.

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 Consultant is located in Colorado and maintains workers’ compensation insurance, as required under the laws of the State of Colorado. 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.
e. The Consultant shall provide copies of insurance policies upon request of the Board and in redacted form if necessary to protect confidential information.
f. 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.

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. N/A

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. **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.

25. **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.

26. **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.

27. **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.

28. **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:

Consultant Contact Info

If to the Board:

DW Employee  
Denver Water Department  
1600 West 12th Avenue  
Denver, Colorado 80204  
DWEmployee@denverwater.org  
or such other persons or addresses as the parties may have designated in writing.

29. **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.

30. **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.

31. **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.
32. **Effective Date.** This Agreement shall become effective on the date it is fully signed by the Board.

33. **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.

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

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: Consultant Name
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:

Description of scope of work.
Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

1. Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2. Business name/disregarded entity name, if different from above

3. Check appropriate box for federal tax classification; check only one of the following seven boxes:
   - Individual/sole proprietor or
   - Corporate (C Corporation, S Corporation, Partnership, Trust/estate)
   - Single-member LLC
   - Member of limited liability company. Enter the tax classification (C: C corporation, S: S corporation, P: partnership)

4. Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
   - Exempt payee code (if any)
   - Exemption from FATCA reporting code (if any)
   - Exemption from FATCA reporting code (if any)
   - Exemption from FATCA reporting code (if any)

5. Address (number, street, and apt. or suite no.)

6. City, state, and ZIP code

7. Requester's name and address (optional)

Part I

Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note: If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

Part II

Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest and dividends on your tax return, or (c) the IRS has not notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here

Signature of

Date

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/w9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must furnish your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN). In a report on an information return the amount paid to you, or other amount reportable on the information return, Examples of information returns include, but are not limited to, the following:

- Form 1098 (rental interest earned or paid)
- Form 1098-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

Cat. No. 10231X

Form W-9 (Rev. 12-2014)


Revised by OGC 8/23/19