

A G R E E M E N T

THIS AGREEMENT is made _____, 2009, between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **THE BO MATTHEWS CENTER FOR EXCELLENCE**, a Colorado _____, whose address is _____ (the “Consultant” or “Contractor”), collectively “the parties”.

R E C I T A L S

- A. By agreement dated _____ (the “Good Neighbor Agreement,” a copy of which is attached hereto as Exhibit A), Consultant, representatives of the Denver Department of Human Services, and various stakeholders committed to certain responsibilities with respect to the development and management of the Fourth Quarter Apartments at 3154 Downing Street, Denver, Colorado.
- B. Among other things, the Good Neighbor Agreement provided that this services agreement would incorporate the Consultant’s Good Neighbor Agreement obligations, as well as certain commitments of the Denver Department of Human Services.

NOW THEREFORE, the parties agree as follows:

1. COORDINATION AND LIAISON: The Consultant shall fully coordinate all services under this Agreement with the Manager of Denver Department of Human Services, (“Manager”) or, the Manager’s designee.

2. SERVICES TO BE PERFORMED:

a. As the Manager generally directs, the Consultant shall diligently undertake, perform, and complete all of the services set forth on **Exhibit B, Scope of Work**, to the City’s satisfaction.

b. The Consultant is ready, willing, and able to provide the services required by this Agreement.

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

3. **TERM:** The Agreement will commence on _____, 2010 and will expire on _____, 201_ (the "Term"). Subject to the Manager's prior written authorization, the Consultant shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Manager.

4. **COMPENSATION AND PAYMENT:**

a. **Fee:** The City shall pay and the Consultant shall accept as the sole compensation for services rendered and costs incurred under the Agreement \$_____. Amounts billed may not exceed the budget set forth in **Exhibit C**.

b. **Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Consultant's expenses are contained in the budget in Exhibit C.

c. **Invoicing:** Consultant shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought, and all other supporting documentation required by the City. The City's Prompt Payment Ordinance, § § 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement. Funds will be disbursed in appropriate monthly increments, upon receipt and approval of Consultant's monthly invoices and any City required budget documents or reports. Consultant's invoice(s) will include any and all appropriate supporting documentation, including time sheets, payroll records, receipts, and any other document which may be pertinent in light of the nature of the services performed or expenses incurred under this Agreement. Consultant's invoice(s) will reflect in detail the services performed within the period for which the payment is requested and will address all completed project outcomes. Consultant's invoices must identify costs and expenses actually incurred in accordance with the budgeted categories and amounts contained in Exhibit C and any applicable rate schedule approved by the City. Budget line items may be modified by the written approval of the Manager as long as no budget line item modification causes the budget to exceed the Maximum Contract Amount. Funds payable by the City hereunder shall be distributed to the Consultant on a reimbursement basis only for work performed and expenses incurred during the prior month. Invoices submitted for payment must be received by the Agency on or before the fifteenth (15th) day of the month subsequent to the month for which reimbursement is being sought. Invoices submitted for services rendered that are submitted after such deadline are considered to be untimely and must be submitted separately to be considered for payment.

Payment for such late-submitted invoices shall be made only upon a showing of good cause for the late submission. Timesheets must reflect the amount of time, in hours and tenths of hours, attributable to each activity performed under this Agreement. In the event that the Consultant allocates allowable costs to more than one grant, project, or contract, then timesheets must further identify the allocation of allowable costs for each grant, project or contract.

d. Maximum Contract Amount:

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

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

(3) If, as a result of any audit or program review relating to the performance of the Consultant or its officers, agents or employees under this agreement, there are any irregularities or deficiencies in any audit or review, then the Consultant will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City's favor unless the Consultant obtains a resolution in its favor from the responsible official conducting the audit or review. In any event, the Consultant shall be responsible to indemnify and save harmless the City, its officers, agents and employees, from and against any and all disallowed costs.

5. STATUS OF CONSULTANT: The Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the

Consultant nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. REPORTS/CORRESPONDENCE:

a. **Submission Deadlines of Reports:** The Consultant shall provide the Agency with a monthly narrative summary report on activities performed with the assistance of funds provided under this Agreement no later than the fifteenth (15th) day of each month following the effective date of this Agreement, and continuing through the month following the date of termination of this Agreement. Each such report shall set forth in detail the progress of work under this Agreement and any other information reasonably requested by the City and shall be submitted in such a format as may be designated by the City. Such reports may be submitted electronically by disk or e-mail, followed by hard copy transmittal. In addition, the Consultant shall comply with any and all contract closeout procedures directed by the Manager to be performed under this Agreement for final reimbursement, including but not limited to final review of payments, invoices, referrals, and required reporting documents, including close-out signature.

b. **Correspondence:** All invoices, reports, and other written correspondence concerning procedural or administrative contract matters, other than notices required under Article 20 of this Agreement, will be delivered electronically to DHS_Contracting_Services@denvergov.org, or by U.S. mail to:

Attn: Contracting Services
Denver Department of Human Services
1200 Federal Boulevard, 4th Floor
Denver, Colorado 80204

7. PERFORMANCE MONITORING/INSPECTION: The Consultant shall permit the Manager to monitor and review the Consultant's performance under this Agreement. The Consultant shall make available to the City for inspection any and all files, records, reports, policies, minutes, materials, books, documents, papers, invoices, accounts, payrolls and other data, whether in hard copy or electronic format, used in the performance of any of the services required hereunder or relating to any matter covered by this Agreement in order to coordinate the performance of services by the Consultant in accordance with the terms of this Agreement. All such monitoring and inspection shall be performed in a manner that will not unduly interfere

with the services to be provided under this Agreement. Not less than annually, the Denver Department of Human Services will conduct a performance review of Consultant's services (the "Good Neighbor Performance Review"), the results of which will be shared with the authorized organizational members of the Good Neighbor Agreement Task Force or their designees. Each member will be given an opportunity to provide written comments. The Manager may in her discretion convene the Task Force to discuss issues and seek consensus on recommended actions, and will monitor the outcomes of any recommended actions. Where consensus cannot be reached by the Task Force, the Manager will mediate or arrange for mediation of unresolved issues.

8. CONFIDENTIAL INFORMATION; OPEN RECORDS:

a. Confidential Information: The Consultant acknowledges and accepts that, in the performance of all work under the terms of this Agreement, the Consultant will or may have access to the following types of information: (1) City Proprietary Data or confidential information that may be owned or controlled by the City ("City Proprietary Data"); (2) confidential information pertaining to persons receiving services from the Agency ("Client Data"), or (3) confidential proprietary information owned by third parties ("Third Party Proprietary Data"). For purposes of this Agreement, City Proprietary Data, Client Data, and Third Party Proprietary Data shall be referred to collectively as "Confidential Information". The Consultant agrees that all Confidential Information provided or otherwise disclosed by the City to the Consultant or as otherwise acquired by the Consultant during its performance under this Agreement shall be held in confidence and used only in the performance of its obligations under this Agreement. The Consultant shall limit access to any and all Confidential Information to only those employees who have a need to know such information in order to provide services under this Agreement. The Consultant shall exercise the same standard of care to protect any and all Confidential Information as a reasonably prudent consultant or contractor would to protect its own proprietary or confidential data. Consultant acknowledges that Confidential Information may be in hardcopy, printed, digital or electronic format. The City reserves the right to restrict at any time Consultant's access to electronic Confidential Information to "read-only" access or "limited" access as such terms are designated by the Manager.

The Consultant agrees to comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all Client Data that include protected medical records or

protected information. The Consultant shall establish and submit to the City, within fifteen (15) days of the City's written request thereof, copies of Consultant's policies and procedures to maintain the confidentiality of any protected medical records or protected information to which the Consultant has access. In the event that the Consultant is required to access Client Data that include protected medical records from a third party provider or is required to provide Client Data, including protected medical records to the City for purposes of monitoring and evaluating the Consultant's performance under this Agreement, then the Consultant agrees to fully coordinate with DHS case managers or other appropriate DHS personnel and the client in order to obtain any necessary consent forms, authorization forms, or release forms.

(1) **Use of Confidential Information:** Except as expressly provided by the terms of this Agreement, the Consultant agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any Confidential Information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. The Consultant further acknowledges that by providing access to Confidential Information, the City is not granting to the Consultant any right or license to use such data except as provided in this Agreement. The Consultant further agrees not to reveal, publish, disclose, or distribute to any other party, in whole or in part, in any way whatsoever, any Confidential Information without prior written authorization from the Manager.

(2) **City Methods:** The Consultant agrees that any ideas, concepts, know-how, computer programs, or data processing techniques developed by the Consultant or provided by the City in connection with this Agreement shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The Consultant agrees, with respect to Confidential Information, that: (a) the Consultant shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (b) the Consultant shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (c) the Consultant shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

(3) **Employees and Subcontractors:** The requirements of this provision shall be binding on the Consultant's employees, agents, officers and assigns. The Consultant warrants that all of its employees, agents, and officers who designated to provide services under this Agreement will be advised of this provision. All requirements and obligations of the Consultant under this Agreement shall survive the expiration or earlier termination of this Agreement.

(4) **Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing Confidential Information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including, but not in any manner limited to, fitness, merchantability, accuracy and completeness of the Confidential Information. The Consultant acknowledges and understands that Confidential Information may not be completely free of errors. The City assumes no liability for any errors or omissions in any Confidential Information. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Consultant agrees to contact the City immediately.

b. **Open Records:** The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S., and that in the event of a request to the City for disclosure of such information, the City shall advise the Consultant of such request in order to give the Consultant the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Consultant agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Consultant further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of the Consultant's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

9. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

10. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

11. TERMINATION:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Consultant. However, nothing gives the Consultant the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

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

c. If the Agreement is terminated, the Consultant will be compensated solely for work requested and satisfactorily performed. Upon termination of the Agreement, with or without cause, the Consultant has no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

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

12. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any

pertinent books, documents, papers and records of the Consultant, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. The Consultant shall keep true and complete records, and shall annually furnish an accurate statement for the preceding calendar year, of all business transactions under this Agreement, which statement shall be certified by an authorized representative of the Consultant to be correct. The Consultant agrees to establish and maintain a system of bookkeeping satisfactory to the Manager or the City's Auditor and to give any authorized representatives of the State or the City access during reasonable hours to such books and records. The State of Colorado or the City's Auditor shall have the right at any time, and from time to time, to audit all of the books of account, bank statements, documents, records, returns, papers and files of the Consultant related to this Agreement, whether prepared manually or electronically, and the Consultant, upon request, shall make all such matters available for such examination. If said records exist in electronic form, the Consultant shall maintain a means of transferring said records to hardcopy form. The Consultant's obligation to retain the above records shall expire three (3) years after the Consultant's statement for any period has been delivered to the City.

13. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Consultant. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

14. INSURANCE:

General Conditions: Consultant shall secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Consultant shall keep the required insurance coverage in force at all times during the Term and any extension of it, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance must be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy must contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date

thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. This written notice must be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice must be sent ten (10) days prior.” Additionally, Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, Consultant shall notify the City pursuant to the Agreement. Consultant is responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant.

a. **Proof of Insurance:** Consultant shall provide a copy of this Agreement to its insurance agent or broker. Consultant may not commence services or work relating to the Agreement prior to placement of coverage. Consultant certifies that the certificate of insurance attached as **Exhibit D**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement is not and will not act as a waiver of Consultant’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

b. **Additional Insureds:** For Commercial General Liability and Auto Liability, Consultant's and subconsultant’s insurer(s) must name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

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

d. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers, or other entities providing goods or services required by this Agreement) are subject to all of the requirements in this Agreement and shall procure and maintain the same coverages required of the Consultant. Consultant shall include all its subconsultants and contractors as additional insureds under its policies (with the exception of Workers’ Compensation) or shall ensure that all its subcontractors and

subconsultants maintain the required coverages. Consultant shall provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

e. Workers' Compensation/Employer's Liability Insurance: Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Consultant expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Consultant's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the Term, and that any such rejections previously effected, have been revoked as of the date Consultant executes this Agreement.

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

g. Business Automobile Liability: Consultant shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

h. Additional Provisions:

- (1) For Commercial General Liability and Excess Liability, the policies must provide the following:
 - (a) That this Agreement is an Insured Contract under the policy;
 - (b) Defense costs in excess of policy limits;
 - (c) A severability of interests, separation of insureds or cross liability provision; and
 - (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (2) For claims-made coverage:

(a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

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

(4) For all general liability, the policy must not contain any exclusion for sexual abuse, molestation, discrimination or similar offenses, unless a separate policy covering this risk is provided and accepted by the City.

15. DEFENSE AND INDEMNIFICATION:

a. Consultant shall defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless Claims shall have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity has the broadest meaning possible to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Consultant’s duty to defend and indemnify City arises at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Consultant’s duty to defend and indemnify City arises even if City is the only party sued by Claimant and/or Claimant alleges that City’s negligence or willful misconduct was the sole cause of Claimant’s damages.

c. Consultant shall defend all Claims brought or threatened against City, and will pay on behalf of City, any expenses incurred by reason of Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating Claims or seeking to enforce this indemnity obligation. These payments on behalf of City are in addition to any other legal remedies available to City and may not be considered City’s exclusive remedy.

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

e. This defense and indemnification obligation survives the expiration or termination of this Agreement.

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

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

18. ASSIGNMENT; SUBCONTRACTING: The Consultant shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement on account of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Consultant shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

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

20. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing

contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Consultant receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

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

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

23. CONFLICT OF INTEREST:

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

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

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

(2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program or the Department Program.

(4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

(5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Consultant will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

26. PASS-THROUGH OF CITY OBLIGATIONS PURSUANT TO THE APPLICANT VERIFICATION STATUTE: This Agreement is subject to Article 76.5 of Title 24, Colorado Revised Statutes, and any rules adopted pursuant thereto, as now existing or as amended. On the request of the Agency, the Consultant shall verify the lawful presence in the United States, of each natural person eighteen years of age or older (the “Applicant”), who applies for Federal, State or Local Public Benefits (“Benefits”) conferred pursuant to this Agreement, as such Benefits are defined in the Applicant Verification Statute. On the request of the Agency, the Consultant shall require the Applicant to produce one of the forms of identification listed in the Applicant Verification Statute, and execute an affidavit in the form attached to this Agreement as Exhibit E and incorporated here by reference. Where applicable,

the Consultant shall maintain copies of each Applicant's identification documentation and affidavit, and shall make such copies available to the City upon request.

27. DISPUTES: All disputes between the City and Consultant arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f), *et seq.* For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement. However, suits by third parties against the City, suits for contribution, or suits for indemnification (any of which suits are related to the performance of this Agreement by the Consultant) shall not be determined by administrative hearing but shall be heard in court.

28. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

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

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

31. LEGAL AUTHORITY: Consultant represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action

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

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

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

34. INTELLECTUAL PROPERTY RIGHTS: The City and Consultant intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Consultant and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Consultant shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Consultant (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

35. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the

Consultant's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

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

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

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

39. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Consultant shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Consultant from City facilities or participating in City operations.

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

THE PARTIES have executed this Agreement as of the date first written above.

ATTEST:

CITY AND COUNTY OF DENVER:

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

By: _____
M A Y O R

RECOMMENDED AND APPROVED:

By: _____
Manager, Department of Human Services

APPROVED AS TO FORM:

DAVID R. FINE
CITY ATTORNEY for the City and
County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Assistant City Attorney

Contract Control No.

By: _____
Auditor

"CITY"

ATTEST: [If required by Corporate
procedures]

**THE BO MATTHEWS CENTER FOR
EXCELLENCE**
Taxpayer (IRS) I.D. No.

By: _____

By: _____

Title: _____

Name: _____
(please print)
Title: _____

"CONSULTANT"

- EXHIBIT A GNA
- EXHIBIT B SCOPE OF WORK
- EXHIBIT C BUDGET
- EXHIBIT D CERTIFICATE OF INSURANCE
- EXHIBIT E VERIFICATION AFFIDAVIT