

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 **Verify the correct legal name of the Consultant and insert here** (“Consultant”), whose address is **Insert Consultant's address**. The Board and the Consultant agree as follows:

1. Scope of Work. The Consultant agrees to provide work to the Board in accordance with Exhibit A, attached and incorporated (the “Work”). The Work specifically includes any and all deliverables provided to the Board under this Agreement. Generally, the Consultant will **Insert description of the work the Consultant will perform**.
2. Notice to Proceed. **DELETE THIS PARAGRAPH IF DENVER WATER WILL NOT ISSUE A NOTICE TO PROCEED, WHICH NOTIFIES THE CONSULTANT THAT IT MAY BEGIN THE WORK**. 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. **DENVER WATER MAY ADD MILESTONES FOR THE PROJECT TO THIS PARAGRAPH OR REFERENCE MILESTONES IN AN ATTACHMENT**. 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 **Insert date by which Work must be completed**. 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 ___ are incorporated into this Agreement. In addition to the terms in Exhibit ___, 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 receive 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.

Insert hourly rates for persons who will perform Work under this Agreement and names of those persons if appropriate.

b. The Consultant shall provide invoices each month for Work accomplished through the last day of the preceding month. The Consultant's invoices shall include a description of the Work performed by and the hours worked by each person for the billing period. The Consultant must submit documentation supporting the charges in the invoice, which must be consistent with this Agreement, and must include the contract number of this Agreement on each invoice.

c. The Consultant will be paid for the following out-of-pocket costs, as long as they are approved in advance by the Board:

travel expenses; long distance telephone calls; postage; faxes; express delivery services; printing and reproduction; photocopying; materials specified in the Agreement; and subcontracted work.

The Consultant shall bill for the out-of-pocket costs listed above at actual costs without markup. For any out-of-pocket costs that exceed \$200.00, the Consultant shall provide a copy of the underlying invoice, travel voucher or other document supporting the out-of-pocket cost.

- d. The total compensation under this Agreement, including out-of-pocket costs, shall not exceed \$**Insert not-to-exceed amount**.
8. Payment. Payments shall be based upon the Consultant's verified progress in completing the Work. Unless the Consultant has not properly performed the Work, invoices will be paid within thirty (30) days of receipt. The Board has the right to refuse to pay all or a portion of an invoice that is inconsistent with this Agreement; all undisputed portions of the invoice shall be paid. The Board may delay payment until it can verify the accuracy of the invoice, obtain releases or waivers with respect to Work covered in the invoice (and with respect to Colo. Rev. Stat. Article 26 of Title 38 if applicable), or resolve a dispute with the Consultant regarding an invoice. **The Board will not issue payments unless the Consultant has current insurance coverage in accordance with this Agreement.** Checks shall be made payable to the trade or business of the Consultant.
9. Records and Audits. The Consultant shall at all times maintain a system of accounting records in accordance with its normal procedures, together with supporting documentation for all Work, personnel screening requirements, 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 current certificates of insurance demonstrating that the requirements have been met upon request at any time during this agreement.

- 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:
DELETE THE TWO ALTERNATIVES BELOW THAT DO NOT APPLY.

ALTERNATIVE 1:

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

ALTERNATIVE 2:

The Consultant is located in Colorado and does not maintain workers' compensation insurance because either the Consultant has rejected such coverage by waiver pursuant to C.R.S. § 8-41-202 or the Consultant is a sole proprietor without employees and is not performing construction work under this Agreement. If the Consultant has waived coverage as described above, the Consultant will provide the Board with evidence of its waiver along with the other certificates of insurance. **IF THE CONSULTANT IS A SOLE PROPRIETOR WITHOUT EMPLOYEES, SELECT THIS ALTERNATIVE. HOWEVER, IF THE CONSULTANT ALSO IS DOING CONSTRUCTION WORK, DENVER WATER REQUIRES EVIDENCE OF WORKERS' COMPENSATION INSURANCE (CHOOSE ALTERNATIVE 1 ABOVE) OR WAIVER (CHOOSE ALTERNATIVE 2). CONSTRUCTION WORK IS DEFINED IN C.R.S. § 8-41-404(5)(b); THE DENVER WATER REPRESENTATIVE SHOULD CONSULT WITH THE LEGAL DIVISION TO DETERMINE WHETHER THE WORK MEETS THIS DEFINITION.**

ALTERNATIVE 3:

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

workers' compensation insurance, as required by Colorado law, in full force and effect during the full term of this Agreement.

- e. Cyber and/ or Technology Errors and Omissions Insurance:
Cyber and/ or Technology Errors and Omissions Insurance as set forth in Appendix 1.
 - f. 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.
 - g. The Consultant shall provide copies of insurance policies upon request of the Board and in redacted form if necessary to protect confidential information.
 - h. The Board reserves discretion to accept alternative types of insurance.
13. Computer and Telecommunications Security. The Consultant acknowledges that it may require access to and use of the Board's data, computer or telecommunication resources to fulfill the terms of this Agreement. The Consultant agrees that the Consultant and its employees or agents who use such resources will comply with the provisions of Appendix 1, "Information Security Requirements Addendum," attached and incorporated.
14. 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.
15. 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.

16. Personnel Screening.
17. Liability. The Consultant agrees to indemnify, hold harmless and defend the Board against any liability, damages, costs, expenses, claims, injuries and losses of whatever nature arising in any way out of this Agreement, including but not limited to any expenses incurred by the Board as a result of damages to the Board's property and any claims that the Creations, Prior Works or the Work infringe the intellectual property rights of a third party, to the extent caused by any negligent act or omission or willful misconduct of the Consultant or the Consultant's officers, subcontractors, agents, or employees.
18. Standards of Conduct – Nondiscrimination and Respectful Workplace. The Consultant agrees not to discriminate against any Board employee, or potential subcontractor or supplier because of race, color, religion, age, national origin, gender, sexual orientation, pregnancy, military status, marital status, or disability. The Consultant further agrees not to conduct business in a manner that brings discredit to the Board or creates a hostile or disrespectful work environment for Board employees, Board customers, or other contractors performing work for the Board. The Board reserves the right at its sole discretion to terminate this Agreement if the Consultant is an individual, or to direct the Consultant to assign another employee or agent to perform the Work, if the Board has reason to believe that during the term of the Agreement the Consultant, or the assigned employee or agent engaged in activity prohibited by this section.
19. Small Business Enterprises; Minority- and Women-Owned Business Enterprises. The Board recognizes the desirability, need and importance to the City and County of Denver of encouraging the development of Small Business Enterprises ("SBEs") and Minority- and Women-Owned Business Enterprises ("MWBEs"). The Consultant agrees to make a good faith effort to involve SBEs and MWBEs in the Work if and when the opportunity arises.
20. Environmental Compliance. Denver Water strives to adhere to all applicable environmental laws, regulations, and policies. In addition, it utilizes an Environmental Management System to monitor and improve its environmental performance. In the performance of the work, Consultant must comply with all applicable environmental laws, regulations, ordinances, specifications, reporting requirements, and any other relevant requirements.
21. Acceptance Not Waiver. The Board's approval of studies, drawings, designs, plans, specifications, reports, computer programs and other work or materials does not in any way relieve the Consultant of responsibility for the technical accuracy of the Work. The Board's approval or acceptance of, or payment for, any Work is not a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

22. Termination or Suspension. The Board reserves the exclusive right to terminate or suspend all or any portion of the Work by giving fourteen (14) days' written notice to the Consultant. If any portion of the project shall be terminated or suspended, the Board shall pay the Consultant equitably for all Work properly performed pursuant to this Agreement. If the project is suspended and the Consultant is not given an order to resume work within sixty (60) days from the effective date of the suspension, this Agreement will be considered terminated. Upon termination, the Consultant shall immediately deliver to the Board any documents then in existence that have been prepared by the Consultant pursuant to this Agreement and that have been paid for by the Board.
23. Default. Every term and condition of this Agreement is a material element of this Agreement. In the event either party should fail or refuse to perform according to the material terms of this Agreement, such party may be declared in default by the other party by a written notice.
24. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) days within which to correct, or commence correcting, the default. In the event that the default has not been corrected or begun to be corrected, or the defaulting party has ceased to pursue the correction with due diligence, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. In the event the Consultant fails or neglects to perform the Work in accordance with this Agreement, the Board may elect to correct such deficiencies and charge the Consultant for the full cost of the corrections. The parties agree that no profits that the Consultant might realize from this or other work are within the scope of their agreement. They further agree that the Consultant waives any right to recover and shall not be compensated for any such lost profits or other consequential damages arising from a breach by the Board.
25. Force Majeure. The parties shall not be responsible for any failure or delay in the performance of any obligations under this Agreement solely caused by the following events: natural disaster, flood, fire, war, or public enemy. Events not listed in the preceding sentence, including, but not limited to, epidemics such as the current COVID-19 pandemic, economic conditions, and labor strikes, shall not be considered force majeure events. As a condition precedent to invoking this force majeure clause, the invoking party must provide timely written notice detailing the reasons why the force majeure event has made performance under the original contract terms impossible, and the invoking party must immediately take all reasonable measures to mitigate or avoid damages to the other party.
26. Assignment and Subcontracts. The Consultant may not assign this Agreement or any right or liability of this Agreement or enter into any subcontract or amend any subcontract related to this Agreement without prior written consent of the Board.

Any subcontract must include language similar to the Records and Audits paragraph of this Agreement, requiring records to be adequate and available for Board audit. This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns. This Agreement is intended to benefit only the parties, and neither subcontractors nor suppliers of the Consultant nor any other person or entity is intended by the parties to be a third-party beneficiary of this Agreement.

27. Severability. If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement will remain enforceable to the fullest extent permitted by law.
28. Venue and Governing Law. This Agreement shall be deemed performable in the City and County of Denver, notwithstanding that the parties may find it necessary to take some action outside the City and County. The sole venue for any dispute resulting in litigation shall be in the District Court in and for the City and County of Denver. This Agreement shall be governed by and construed under the laws of the State of Colorado.
29. Notice and Contact. The parties shall contact the persons listed below for all matters related to administration of this Agreement. All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other party; or (b) seven (7) days after posting in the United States mail, first-class postage prepaid, properly addressed as follows; or (c) when sent by e-mail. If notice is provided by e-mail, the notifying party must follow up with a hard copy of the notice sent by United States mail; however, the notice will be effective as of the original e-mail date.

If to the Consultant:

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

If to the Board:

Insert title of person responsible for contract
Denver Water Department
1600 West 12th Avenue
Denver, Colorado 80204
Insert e-mail address of person responsible for contract

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

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

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

Insert the following attestation for Board signature only
ATTESTED:

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

By:
Secretary

By:
Insert "President," "CEO/Manager" or appropriate Chief title depending on \$ amount (See Contracting Procedures in Financial Manual)

DATE:

<p>APPROVED:</p> <p>By: Insert appropriate Chief title if Board or CEO/Manager signs above</p>	<p>REGISTERED AND COUNTERSIGNED: CITY AND COUNTY OF DENVER</p> <p>By: Timothy M. O'Brien, CPA Auditor</p>
<p>APPROVED AS TO FORM:</p> <p>By: Office of General Counsel</p>	

THIS AGREEMENT IS ACCEPTED BY:

CONSULTANT: **Insert name of the Consultant**

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

By:

DATE: _____

TITLE:

[for other than individual]

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

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

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

**EXHIBIT A
SCOPE OF WORK**

The Consultant shall perform the following tasks:

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

APPENDIX 1 - INFORMATION SECURITY REQUIREMENTS ADDENDUM

This information security requirements addendum (“ISR”) is entered between the Board and its Contractor or Consultant (“Consultant”) and is incorporated into the Agreement to which it is attached (the “Agreement”) as if set forth in full therein. Any capitalized terms not defined herein will have the meaning ascribed in the Agreement.

Consultant will comply, and will ensure that its personnel and subcontractors comply, with the information security and privacy requirements set forth herein (collectively, the “Requirements”) at all times during the term of the Agreement, and thereafter until such time as all parties performing services are no longer in possession of or have access to Board Data (as defined below) or Board systems, consistent with Para. 2.5 below.

1. STANDARD OF CARE

Consultant acknowledges and agrees that, in the course of its engagement by Board, Consultant may receive or have access to Board information, drawings, schematics, or other documents, whether in electronic or other format, that may include private, personal, proprietary information, protected health information, payment card information, critical infrastructure information, business processes, security, technology infrastructure, employee and citizen identifiers, and/or any other regulated or sensitive data (collectively and individually, “Board Data”). Consultant will comply with the Requirements in the collection, receipt, transmission, storage, disposal, use, and disclosure of Board Data, and Consultant will be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use, and disclosure of Board Data under its control or in its possession. Consultant will keep and maintain all Board Data in confidence, according to the obligations set forth in the Agreement and this ISR.

2. SECURITY REQUIREMENTS

2.1 **Use of Board Data.** Consultant will use Board Data, even if anonymized, solely for the purpose of supporting Consultant’s performance of services and work under the Agreement unless otherwise specifically stated in writing. Upon discovery or notice of any unauthorized use or processing of Board Data, Consultant will comply with 4.1 below and promptly notify the Board in writing, in the manner specified for Notices in the Agreement, and take all reasonable immediate steps to stop such unauthorized use or processing, and coordinate with the Board regarding Consultant’s remediation of such unauthorized use or processing. If the Consultant/Contractor utilizes Artificial Intelligence (AI) with Board Data, it shall not use the Board Data to train the AI model without prior disclosure to, consultation with, and written consent of the Board.

2.2 **Security Measures and Information Security Programs.** Consultant will use security measures at least as stringent and protective as is standard in Consultant’s industry for its computer systems and information storage facilities in the United States to safeguard Board Data. **[DW MAY ADD A MORE SPECIFIC STANDARD IF APPLICABLE.]** Consultant represents that it has implemented and will adhere to a comprehensive written information security program for maintaining security controls to protect Board Data in its possession or control against accidental, unauthorized, or unlawful destruction, loss, alteration, disclosure, and access, and against all other unlawful activities. Consultant’s information security program will include rules on the collection, maintenance (including access rights), transmittal, and disposal of any third party data, including Board Data, and will include training, oversight, tests for vulnerabilities, system checks, and measures to prevent and detect unauthorized access. Consultant will conduct security awareness training described in **Appendix A** and retain verification of attendance. Consultant will, upon request, provide Board copies of its information security

program, security documents, policies, procedures, and compliance information, redacted as may be reasonably necessary to protect the confidentiality of Consultant's program. Consultant will notify Board in writing of any material changes to the security measures, information security program, infrastructure, vendors, solutions, or processes used to provide security or services to Consultant or to Board, or any Board designee, and will provide upon reasonable request Board access to verify no such changes have occurred.

2.3 Infrastructure Security. Consultant will install and maintain anti-virus software, apply all system patches and updates provided from primary vendors for operating systems, middleware, and hardware and, to the extent possible, use real time protection features. Consultant will not introduce any viruses, time or logic bombs, Trojan horses, worms, timers, clocks, trap doors, or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down Board's system or any component of Board's system, including, without limitation, its security or data. In the event a virus or similar issue is found to have been introduced into Board's system by Consultant, Consultant will, at its sole expense: (a) use commercially reasonable efforts to correct, reduce or eliminate the effects of the virus or similar issues affecting the Board's system; and (b) if the virus or similar issue causes a loss of operational efficiency or loss of data, mitigate, restore and reimburse the Board for all such losses; and (c) cooperate with the Board or other impacted party in all ongoing, reasonable, and lawful efforts to mitigate or rectify such Security Incident or Data Breach including complying with applicable breach notification laws. (Consultant liability hereunder is limited as provided in 10.2 below.) Any officer, employee, contractor or agent of the Consultant who knowingly or willfully discloses Board Data in a manner that is not authorized or falsifies, conceals, or covers up by any trick, scheme, or device a material fact, makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document to obtain Board Data, will be subject to appropriate sanctions including referral for criminal prosecution. The Consultant will also investigate and, as necessary, impose sanctions on its employees and agents for such actions.

2.4 Encryption and Secure Transmission of Data. Consultant represents that all electronic Board Data in storage with any Consultant Party will reside behind an appropriate and secure firewall and will retain any data storage encryption in place at the time of service commencement within the respective environment. In no case will Board Data be transmitted without being encrypted.

2.5 Destruction and Return of Board Data. Within 30 days of the completion of the Services and delivery of work under the Agreement (or within 30 days of the expiration of the period that professional, regulatory, or other requirements may require Consultant to retain the information) and at Board's discretion, Consultant will return to Board, if in physical format, or securely destroy, if in electronic format, all Board Data in such Consultant's possession, custody, or control in such a manner as to eliminate the possibility that Board Data is capable of being accessed, read, or reconstructed. In addition, Consultant will provide to Board a written certification by an officer of Consultant confirming that such return or destruction occurred. If a Consultant cannot destroy all Board Data as required herein due to recordkeeping law or the pendency of litigation requiring it to retain Board Data in its existing format, Consultant agrees that it: (a) will promptly notify Board of that; (b) will continue to protect Board Data as agreed to in this ISR; (c) will not use or disclose Board Data except as required by that situation; (d) will ensure the confidentiality of Board Data while it is retained; and (e) will comply with its destruction obligations once the need for retention has expired.

3. PHYSICAL AND ENVIRONMENTAL SECURITY

Consultant will implement appropriate security measures at any Consultant facilities where Board Data is processed or stored. Such security measures must include, at a minimum: (a) documented disaster recovery plan for accessing the facility and Board Data, and restoring Board Data if needed, in the case of an emergency or crisis; (b) reasonable environmental safeguards designed to protect systems storing Board Data from smoke, heat, water, fire, humidity, power surge, or other such potential damage; (c) appropriate controls designed to ensure that only authorized Personnel are allowed physical access to the facility; and (d) regular backup of Board Data. Consultant will promptly supply copies of Board Data in a format requested by Board, upon Board's request. Consultant will use all reasonable measures to prevent theft or damage to Consultant systems or storage media containing Board Data, including, without limitation, protecting systems or devices that contain un-encrypted data with physical barriers such as locked cabinet, floor to ceiling room, or secured cage. Consultant will not connect any device or technology to any Board system, network, or infrastructure that has not been provided by Board or approved by Board in writing prior to such connection.

4. SECURITY INCIDENT AND DATA BREACH PROCEDURES

4.1 Security Incident or Data Breach. If any employee of Consultant suspects, discovers, or is notified of: (a) any actual or suspected unauthorized or accidental, access, use, loss, or disclosure of any Board Data which could reasonably be expected to compromise the integrity and confidential nature of such data; or (b) any actual or suspected breach of any Consultant's security or information systems or the systems of Board under management by any Consultant that could reasonably be expected to either (i) expose any Board Data to such unauthorized or accidental access or use, or (ii) cause harm, damage, or negatively affect the function or performance of Board systems, network, or infrastructure ("Security Incident") or unauthorized acquisition of data that compromises the security, confidentiality, or integrity of Board Data maintained by an individual or a commercial entity ("Data Breach"), Consultant will immediately notify Board's Information Security Officer (security@denverwater.org) of such Security Incident or Data Breach by email not later than 24 hours after Consultant suspects, discovers, or is notified of, such Security Incident or Data Breach, and copy the Board representative specified in the Agreement for Notices. Consultant will provide regular status reports to keep the Board apprised of the matter and will respond timely to additional requests for information from Board.

4.2 Notice Contents. Such notification will include, as known at the time of notification: (a) the specific details of the Security Incident or Data Breach; (b) a thorough description of Board Data that may have been accessed or affected; and (c) the effect of the Security Incident or Data Breach on Board Data. In addition, Consultant will provide Board with the corrective action taken or to be taken by Consultant as well as the identity of any affected individual, as soon as such information can be determined or collected. Consultant will provide timely updates on the foregoing details and any other information Board may reasonably request relating to the Security Incident or Data Breach. Consultant will not release or publish any filing, communication, notice, press release, or report concerning the Security Incident or Data Breach without Board's prior written approval (except where it is required to do so by law and then only following written notice to Board).

5. CONSULTANT ACCESS TO BOARD SYSTEMS

Consultant will access only those Board systems, applications, or data that it is expressly authorized by Board to access, even if the technical controls in the system or application do not prevent access to those data or functions outside of Board's authorization. Where Board consents to Consultant engaging a third party to carry out any part of the Services or create any

deliverables, Consultant will impose in any Agreement with such third party provisions in favor of Board which are at least equivalent to those in this ISR and the Agreement. Consultant at all times remains solely responsible for all obligations under this ISR and the Agreement, even in the event such obligations have been delegated by Consultant. Consultant will not permit Board Data to be transferred to any third party that does not comply with all requirements under this ISR and the Agreement unless the transfer is authorized in writing by Board.

6. AUDIT

Board, and its designee, will have the right to inspection of Consultant's facilities, equipment, information security policies, procedures, and records as reasonably necessary to verify compliance with this ISR. Consultant will, and will compel the Consultant's employees to, respond to any inquiries from Board or its designee related to compliance with this ISR, the Agreement, including, without limitation, the information security programs, privacy, and data security related to Board Data in Consultant's possession or systems to which Consultant has access. Board, or Board's designee, may conduct periodic security audits as to the procedures and safeguards used by Consultant to protect Board Data. Consultant will promptly cooperate with all reasonable audit requests by Board, or its designee. Upon Board's, or its designee's, request, Consultant will supply evidence of Consultant's compliance with the terms of this ISR, including supporting certifications, if applicable.

7. TERMS AND CONDITIONS; CLICK THROUGH AGREEMENTS

Consultant agrees that the terms of this ISR will override any unsigned or click-through Agreement as it relates to this ISR, the Agreement, Board Data, Board systems, Board infrastructure, the Services, and any deliverable Work under the Agreement.

8. SUBPOENAS AND LEGAL PROCEEDINGS

Subject to applicable law, Consultant shall notify Board immediately in writing of any subpoena or other judicial or administrative order by a court, tribunal, litigant, or government authority seeking access to or disclosure of Board Data covered by this ISR. Prior to the release of any such Board Data and subject to applicable law, Board shall have the right, at its cost, to challenge and defend subpoena enforcement proceedings or motions to compel. Consultant shall provide reasonable cooperation to Board in connection with these efforts.

9. INDEMNIFICATION

In addition to other remedies set forth in this ISR, Consultant will, at its sole expense, indemnify, defend and hold harmless the Board, its affiliates, and their respective directors, officers, employees, and agents, from and against any and all damages, losses, liabilities, claims, suits, proceedings, disputes, judgments, settlements, costs, fines, and expenses of any nature whatsoever (including, but not limited to, reasonable fees and disbursements for attorneys and other professional advisors, expert witnesses, and court costs) to the extent they are caused by a breach of Consultant's obligations, representations, warranties, covenants, or agreements in this ISR, including any breach notification costs and credit monitoring. (Consultant liability under this Para. 9 is limited as provided in 10.2 below.)

10. INSURANCE

In addition to the insurance coverage required by the Agreement, Consultant shall maintain the following policies or endorsements **[DW MAY INCREASE AMOUNTS AS APPROPRIATE]**:

10.1 Cyber Insurance in the amount of \$1M per claim and in the aggregate, which shall include coverage for cyber liabilities including network security and privacy liability and related fines and penalties imposed, with coverage maintained for a period of two years following the

termination of this contract.

10.2 Consultant's liability to the Board under the indemnification requirements and other obligations in this Addendum shall be capped at the limitations of these policies.

Appendix A TO ISR - Confidentiality and Security Training

Any Consultant who is on site at Board premises designated as security sensitive or who requires access to the Board network will take part in training by the Consultant regarding the following principles before accessing the designated sensitive location, system, or Board Data.

The following are minimum subjects/topics on security training that must be taught but are not intended to be a complete list, and the Consultant should also include subjects/topics that are pertinent to their work.

The trainee should understand the following subjects and restrictions:

GENERAL PERSONNEL REQUIREMENTS

- Understand that personal privacy should not be expected when using Board's information systems. Board may log, access, review, and otherwise utilize information stored on or passing through all systems, including email, in order to manage systems and enforce security.
- Understand that any violation of these principles may result in disciplinary action, up to and including loss of privileges, and termination of authorization to work within the Board facility or with Board Data.

PROTECTING CONFIDENTIAL DATA

- Will not disclose or discuss any Board Data with others who do not have a need to know.
- Will not publish or disclose any Board Data to others using personal email, or to any websites, or through blogs or mobile apps, such as, without limitation, Facebook, Twitter, Instagram, or other social media unless explicitly authorized to do so in support of Board business and within the permitted uses of Board Data as governed by applicable laws and regulations.
- Will not make any unauthorized transmissions, inquiries, modifications, or purges of Board Data.
- Will not transmit Board Data outside Board's internal network unless specifically authorized to do so as part of job responsibilities. If authorized to transmit Board Data outside of Board using email or other electronic communication methods, will ensure that Board Data is encrypted.
- If Board Data is stored on removable media or portable devices, the data will be encrypted while it is on the media.

ABIDING BY APPROPRIATE SECURITY CONTROLS

- Understand to access or use only Board systems and devices that are specifically authorized and will not demonstrate the operation or function of systems or devices to unauthorized individuals.
- Will not bypass or attempt to bypass Board security controls.

- Understand that the Consultant’s personnel will be assigned a unique identifier to track their access and use of Board Data and that the identifier is associated with personal data provided as part of the initial or periodic credentialing and employment verification processes (“User-ID”).
- Will not use any User-ID, password, token, or badge other than what is specifically authorized by the Board.
- Will not allow another person to use any assigned User-IDs, passwords, PINs, badges, or access codes.
- Will not use tools or techniques to break or exploit security measures; or connect unauthorized systems or devices to the Board network.
- Will not allow unauthorized access by practicing good workstation security hygiene, such as locking computer when away from work area, using screen savers with activated passwords, positioning screens away from public view, and such other security measures, as applicable.
- Understand the obligation to immediately notify or cause a representative to notify the Board contact or the Board Information Security Officer as set forth in the ISR if any of the follow occur:
 - password has been seen, disclosed, or otherwise compromised;
 - media with Board Data stored on it has been lost or stolen;
 - suspicion of a virus infection on any system;
 - awareness of any activity that violates this Agreement, or any privacy or security policies; or
 - awareness of any other incident that could possibly have any adverse impact on Board Data or Board systems.

TERMINATION AND COMPLETION

- Understand that obligations under the ISR may continue beyond the term of employment or of a contract.
- Understand that documents and media containing Board Data must be returned or destroyed per the ISR.
- Understand that Consultant or its personnel have no ownership interest in any Board Data accessed or created by the Consultant during and in the scope of the relationship with Board.