GENERAL TERMS AND CONDITIONS FOR DOING BUSINESS WITH THE CITY OF ARVADA

1. PAYMENTS TO CONSTITUTE CURRENT EXPENDITURES. Financial obligations of the City of Arvada, if any, after the current fiscal year are contingent on funds for that purpose being appropriated, budgeted and otherwise made available by the City Council for the City of Arvada. The City of Arvada's obligations under the Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the City of Arvada within the meaning of Article X, Section 20 of the Colorado Constitution.

2. TAXES. The City of Arvada is not subject to taxation. Contractor shall not invoice Arvada for any state, federal or local taxes whatsoever. Upon written notification by the City of Arvada, Contractor shall reimburse the City of Arvada in a timely manner for any taxes erroneously paid by the City of Arvada. The Colorado Department of Revenue, Certification of Exemption for Colorado State Sales/Use Tax account number for the City of Arvada is 98-01789-0000. An exemption certificate will be provided, where applicable, upon request.

3. NO INDEMNIFICATION BY ARVADA. The City of Arvada is prohibited by Article XI, Section 1, Colorado Constitution, from indemnifying anyone. Therefore, notwithstanding any provision in the response to solicitation or proposed contract, lease, escrow agreement or any other type of agreement to the contrary, the City of Arvada does not indemnify Contractor or anyone else under this Agreement.

4. INDEMNIFICATION OF CITY. A. Contractor: Notwithstanding any provision in the response to solicitation or proposed contract, lease, escrow agreement or any other type of agreement to the contrary, Contractor agrees to investigate, defend, indemnify and hold harmless Arvada, its elected officials, officers, employees, agents, insurers, and representatives from and against any claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney fees and other costs and expenses of litigation, which may be asserted against or incurred by Arvada or for which Arvada may be liable, arising from the negligence, willful misconduct, or other fault of Contractor or its employees, agents, or subcontractors in performance of the Agreement. Nothing herein is intended to constitute a covenant, promise, or agreement to indemnify and hold harmless Arvada from any liability or damages directly caused by or attributable to Arvada's own negligence.

5. NO OPINION OF COUNSEL LETTERS. Pursuant to Section 8.1 of the Arvada City Charter, the City Attorney provides advice to the City Council and City Officials in matters relating to their official powers and duties, and will perform such other duties as City Council may prescribe by ordinance or resolution. The City Attorney will not issue opinion of counsel letters, memoranda or statements to third parties, including, but not limited to that any contract or lease is binding on the public entity, enforceable, etc.

6. OPEN RECORD REQUESTS. Notwithstanding any provision in the response to solicitation or proposed contract, lease, escrow agreement or any other type of agreement to the contrary, the City of Arvada is obligated to comply with the Colorado Open Records Act (C.R.S. §§24-72-101 et seq.), which may require the City of Arvada to disclose all or a portion of communications relating to the Agreement, or terms of same, or of any transaction under the Agreement, and other related matters. Contractor has been advised to familiarize it self with the Colorado Open Records Act. Therefore, any confidentiality provisions in the contract, lease, escrow agreement or any other type of agreement are subject to the provisions of the Act.

7. OWNERSHIP OF WORK PRODUCT. The originals of all plans, reports, studies, data, or other materials or information relating to the Work that are produced by Contractor shall be delivered to and become the property of Arvada. Contractor may retain copies of any originals; however, no plans, reports, studies, data, or other materials or information relating to the Work shall be released to any person or entity without the prior written consent of Arvada. Nothing in this clause is intended to affect Contractor's right to use generic know-how learned in the course of providing services under the Agreement for the future benefit of the City of Arvada or others.

8. ASSIGNMENT. Contractor shall not assign the Agreement without the prior written consent of the City of Arvada, which will not be unreasonably withheld, conditioned, or delayed. Contractor may assign the
Agreement to any successor to the business of the party by merger, consolidation, or sale of assets. No assignment shall be permitted that enlarges any duty, responsibility or obligation of the City of Arvada, or that limits, curtails, or diminishes any right or privilege of the City of Arvada without the City of Arvada’s express written consent.

9. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of the Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Arvada and Contractor and nothing contained in the Agreement shall give or allow any such claim or right of action to any other third party on the Agreement. It is the express intention of Arvada and Contractor that any person other than Arvada or Contractor receiving services or benefits under the Agreement shall be deemed to be an incidental beneficiary only.

10. INDEPENDENT CONTRACTOR. Contractor and Arvada hereby represent that Contractor is an independent contractor for all purposes hereunder. As such, Contractor is not covered by any worker’s compensation insurance or any other insurance maintained by Arvada except as would apply to members of the general public. Contractor shall not create any indebtedness on behalf of Arvada.

11. SUBCONTRACTING. Contractor shall not subcontract any of its responsibilities without Arvada’s prior written approval, which will not be unreasonably withheld, conditioned, or delayed. Contractor shall be responsible for any failure by any subcontractor or subcontractor personnel to perform in accordance with the Agreement or to comply with any duties or obligations imposed on Contractor under the Agreement to the same extent as if such failure to perform or comply was committed by Contractor or Contractor’s personnel. Contractor shall be Arvada’s sole point of contact regarding the services, including with respect to payment.

12. ILLEGAL ALIENS; PUBLIC CONTRACTS FOR SERVICES. To the extent that obligations and responsibilities may be established by C.R.S. §§8-17.5-101 et seq., (as amended) (the “Act”), with respect to certain public entities and those contracting therewith as to the procurement of services:

A. Successful Vendor (“Contractor”) shall not knowingly employ or contract with an illegal alien to perform work under the Agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement. Contractor confirms the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or Department Program (the “Program”).

B. Contractor is prohibited from using Program procedures to undertake pre-employment screening of job applicants while the Agreement is being performed.

C. If Contractor obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:
   (i). Notify the subcontractor and the City of Arvada within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
   (ii). Terminate the subcontract with the subcontractor if within three (3) days of receiving the above notice the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the subcontract if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

D. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to the authority established in the Act.

E. Any provision of the Agreement to the contrary notwithstanding, if Contractor violates any provision of this Section, the City of Arvada may terminate the Agreement, without breach or default by the City of Arvada, and Contractor shall be liable for actual and consequential damages to the City of Arvada arising out of such violation.

F. Contractor represents that, prior to executing the Agreement, Contractor has certified that at the time of the certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under this public contract for services and Contractor will participate in either the E-Verify Program or Department Program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services. By execution of this Agreement, Contractor shall be deemed to have renewed such certification.

G. Contractor acknowledges its responsibility to comply with the certification requirement pursuant to C.R.S. §8-17.5-102(2)(b)(I) (as amended).

13. NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing contained in this or any of the exhibits attached thereto shall be construed as a waiver of any of the immunities, limitations, privileges, rights, procedures, or requirements contained in the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq.
14. RIGHT TO TERMINATE. The City of Arvada shall have the right to terminate, without cause, the Agreement. Any such termination shall not be considered a breach of the Agreement or any extension thereof. In the event of termination by the City of Arvada for convenience, Contractor will be paid for requested work performed up until the time of termination by the City of Arvada, not to exceed the total amount of the contract price agreed upon by the parties.

15. COMPLIANCE WITH ALL LAWS. All of the services performed under this Agreement by Contractor shall comply with all applicable laws, rules, regulations and codes of the United States and State of Colorado, and with the charter, ordinances, rules and regulations of the City of Arvada.

16. WAIVER OF BREACH. A waiver by any party to the Agreement or the breach of any term or provision of the Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

17. GOVERNING LAW AND VENUE. Notwithstanding any provision in the response to solicitation or proposed contract, lease, escrow agreement or any other type of agreement to the contrary, the Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under the Agreement or for the enforcement of the Agreement shall be in the appropriate court for Jefferson County, Colorado.

18. FORCE MAJEURE. Any delays in or failure of performance by any party of his or its obligations under the Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

19. BINDING ARBITRATION PROHIBITED. The City of Arvada does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in response to the solicitation, or incorporated by reference, shall be null and void.

20. PARAGRAPH CAPTIONS. The paragraph captions in this solicitation or in the Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of the Agreement.

21. BINDING AUTHORITY. Contractor represents and affirms that the signature page hereof accurately states the full legal name of Contractor (whether as a corporation, partnership, limited liability company, sole proprietorship, or other), contains all requisite signature(s) on behalf of Contractor, has been properly acknowledged by attestation, notary acknowledgment, or both, and in all other respects is effective to bind Contractor, in accordance with all applicable statutes, regulations, resolutions, rules, bylaws, agreements, or similar sources of authority or limitation.