



CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSAL

RFP NO. 43-2009
Climate Action Plan: Residential Program “Two
Techs and a Truck”



ISSUE DATE: September 11, 2009

DUE DATE: October 16th, 2009 4:00 PM

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*NOTE: Yael Gichon will be out of the office from 9/15-10/5. For communication during this time (including the question period) please contact: Sarah Van Pelt: 303-441-1914; vanpelts@bouldercolorado.gov

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**CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSAL
RFP NO. 43-2009
CONSULTING/PROFESSIONALS SERVICES**

Climate Action Plan – Residential Program “Two Techs and a Truck”

Issued: September 18, 2009

The City of Boulder is seeking a consultant or team of consultants to design the programs and the delivery mechanism for the city of Boulder’s residential Climate Action Plan program. The program has been dubbed, “Two techs and a truck,” and encompasses provision of residential energy efficiency measures as well as waste reduction and vehicle fuel efficiency tips to reduce emissions associated with solid waste and transportation. The program is intended to deliver a comprehensive package of services to the residential sector that result in reduced greenhouse gas emissions from residential buildings. The program should be a “one-stop shop” solution for residents, including an initial visit to install low-cost efficiency measures, provide education and promote additional packaged offerings of deeper energy efficiency retrofits.

An optional, additional proposal for implementation and delivery of this program can be submitted in conjunction with the design proposal.

In accordance with the specifications of the RFP, sealed proposal will be received in the office of the purchasing coordinator until 4 P.M. Mountain Time, October 16, 2009. Late proposals will not be considered.

A copy of the Request for Proposal (RFP) may be obtained from the city’s web site at:
www.bouldercolorado.gov/purchasing

Sealed proposals shall be plainly marked ‘RFP No. 43-2009 Climate Action Plan – Residential Program “Two Techs and a Truck” 4 P.M., October 16, 2009’. Proposals can be mailed to:

Calder Grey
City of Boulder – Purchasing Division
P.O. Box 791
Boulder, Colorado 80306-0791

Hand delivered proposals must be delivered to the office of the Purchasing Coordinator, 1777 Broadway, Boulder, Colorado 80302

Proposals shall be prepared at the bidder’s expense and becomes a city record and therefore a public record.

The services upon which proposals are submitted shall equal or exceed the specifications outlined in the RFP. Preference is hereby given to labor, materials, supplies or provisions produced, manufactured or grown in Colorado, quality and price being equal to articles or services offered by competitors outside the State of Colorado.

The lowest responsible and best proposal shall be accepted; provided, however, that the city, acting through its duly authorized representatives, shall have the right to reject any and all proposals and waive any informality or irregularity contained in said proposal.

City of Boulder, Colorado
A Municipal Corporation

By: _____
For the Director of Finance and Record
Ex-officio City Clerk

PART I: General RFP Information

PROJECT BACKGROUND

The Boulder City Council passed the Kyoto Resolution in 2002, establishing a commitment to reduce greenhouse gas emissions to 7% below 1990 levels by 2012 (about 25% below 2008 levels). The city's Climate Action Plan (CAP) was adopted in 2006 and a community-approved 'carbon tax' based on residential and commercial electricity use is collected for the city by the local utility company (Xcel Energy) to fund the annual \$1.6 million CAP budget. There is broad community support for the CAP, CAP tax, energy efficiency and renewable energy.

2008 Sector and Energy Source Greenhouse Gas Emissions (mtCO₂e)

Sector	Percent	Energy Source	Percent
Commercial/ industrial/ University of Colorado/ street lighting	58	Electricity	57
Transportation	22	Transportation	22
Residential	17	Natural gas	18
Solid waste	3	Solid waste	3
Total	100	Total	100

The Boulder City Council has adopted a new Climate Action Plan strategy that will be designed to blanket the city, through neighborhoods, schools, business organizations and other networks to communicate an urgency and excitement around achieving the 2012 goal and to inspire and facilitate the community engagement needed to meet the goal. Social and technical programs will "meet people where they live," that is, deliver financially attractive program packages or offerings to residents' homes and to Boulder businesses. Packages will include financial assistance that will aim to remove possible economic barriers to action. The packages will be complemented by tools that allow individuals, businesses and social networks to compare their progress toward the community goal with other similar individuals and groups. The aim will be to 'connect the dots' for people so that the connection between their residential and commercial energy and transportation habits and the achievement of the goal are inextricably entwined. The CAP strategy will also include measurement and verification efforts to track and deliver tangible, long-term results.

Primary CAP strategy components include the following:

- Social mobilization – umbrella campaign/initiative that integrates all of the CAP strategy components: networks, partnerships, education, programs, delivery, financing, marketing, outreach and measurement.
 - Creates the buzz throughout Boulder that the goal can and should be achieved.
 - Engages neighborhoods, schools, business organizations and other networks.
 - Delivers greenhouse gas emissions reductions by creating the conditions for the community to embrace the CAP goal and mobilize measurable actions to

- achieve it.
- Delivers the desired level of participation (*see below) in city-sponsored energy efficiency programs and by creating community action that can be independent of program participation (e.g. property owners decide to conserve energy or invest in improvements without participating in the city's programs directly).
- Two techs and a Truck (final program name will be designed by consultant) for residential and commercial properties:
 - Visits to properties will include sales/education and technician(s) to provide an energy assessment and complete basic installs. A second phase of installs to be scheduled during the first visit.
 - Services are delivered to individual properties organized by blocks, neighborhoods, social networks, business districts, or business types
 - Programs deliver emissions reductions through energy conservation (behavior change), energy efficiency (investment), renewable energy, financing, transportation, waste reduction, and urban forestry.

PART I: General RFP Information

PROJECT SCOPE

Requested Services: The City of Boulder is seeking a consultant to design the “Two techs and a truck” program. Components of the program are outlined below. Proposals should include a Project Plan that describes how the consultant will address the components of the program as well as at least the following items:

- Identification of the “big picture” issues and how the various project components fit together to address these issues.
- A process and outline for identifying and prioritizing segments of the residential sector and associated energy efficiency packages.
- Risk Identification and mitigation plans to address these risks
- Time line for program rollout, including pilots
- Project Management Structure outlining deliverables, who is responsible, how the project will be managed, timeline and budget to complete the design.
- Recommended role for the city of Boulder

Program Goals: The successful consultant will develop for the city a detailed program plan that can achieve verifiable greenhouse gas reductions by the end of 2012. Currently, the residential sector's target is to reduce greenhouse gas emissions (GHG) by 94,000 mtCO_{2e} by 2012. Some of these GHG emissions reductions will be achieved through other strategies such as the housing code update and renewable energy. The successful consultant's program design will include analysis on the amount of GHG emissions reductions that can be achieved through this program's implementation by 2012 as well as other metrics such as number of homes reached. City staff will work with other consultants and technical experts to develop the social mobilization strategy and elements of the financing packages as well as parallel programs for commercial properties in Boulder. All proposals should identify the critical points in the project time line where

coordination is necessary with the city's financing and social mobilization technical experts. Proposals should describe how program delivery can be scaled to meet the program goals, expected results, timelines, and penetration rates.

Components of Program

Overarching: Targeted Delivery of Services by segment and housing type

There are a variety of segments in the residential sector. We recognize the need to develop different strategies to reach the various segments. While the social mobilization component will address how to engage the various audiences in the program, a targeted design approach for each segment will ensure that the delivery is relevant for the audience. Below is a non-exhaustive list of sectors identified:

- Low income owner occupied
- Middle income owner occupied
- High income owner occupied
- Rental units where occupant pays electric and gas bills; owner controls upgrades to home:
 - Provide incentives for investment by property owners
 - Identify how this program will link with housing codes [under development]
 - Incorporate education for occupant behavior change

Housing Types:

- Single-Family
- Condominiums
- Multi-Family less than 8 units
- Multi-Family greater than 8 units

The consultant is expected to:

- Identify barriers for each audience and housing type
- Identify any subsets that are omitted
- Design an implementation plan for each subset and housing type
- Prioritize the order in which the subsets and housing types should be targeted
- Recommend a target GHG emissions reduction per dwelling unit
- Identify a budget by dwelling unit and by expected greenhouse gas reduction
- Make recommendations on any necessary social mobilization components that should be in place for success
- Make recommendations on any financial incentives or financing packages that should be in place for success.

Program Delivery

Consultants should consider the following in the proposal:

- The possibility of utilizing "T1" auditors from the University of Colorado or a similar program to do an initial visit. This visit currently includes a "mini-audit" (checking insulation levels, appliances, settings on thermostats), direct install of low-cost measures (compact fluorescent light bulbs, clothes drying racks, etc.), as well as education on conservation behaviors. The auditor could provide recommendations for further work and schedule a return visit for installation of deeper measures.
- Sales training- Any recommendations should be outlined for auditor or contractor training.
- Interface with rebates, tax credits and financing – How existing rebates and

incentives, including Xcel Energy's reduced-cost audit program are incorporated into the program delivery.

- Coordination with the Residential Energy Action Program (REAP) – The city has been evolving the REAP from an audit program to an action program, working directly with residents that have had energy audits to create a customized action plan for implementing the audit recommendations they received. The consultant should provide a recommendation on how to serve residents that already have had audits and to provide recommendations for the future of this program.
- How the program delivery can be scaled to meet the program goals, expected results, timelines, and penetration rates.

Financing

Financing is a critical component to the success of this program. A separate process is underway to develop financing mechanisms, but since this will need to be woven into the program delivery, the consultant should both include incentive options and recommendations for financing in the design. The following areas should be considered:

- Incentives – which incentives already exist and which should be developed to increase the success of this program. How should the incentives be designed into the program delivery to overcome barriers?
- Coordinating with Xcel Energy – To achieve maximum success, Xcel Energy's rebates should be leveraged as much as possible.
- Link with ClimateSmart Loan Program – This financing mechanism already exists; the design should provide recommendations on how to incorporate this financing option into the program design to maximize participation.
- Other financial options – The consultant should make recommendations on other viable financial options (e.g. rebates, grants, financing) that should be incorporated into this program.

Contractor network

The implementation of this program will depend on a network of preferred contractors who can install energy efficiency retrofits with a building science approach. There are barriers to the city actually serving as a certification body, therefore the successful consultant should:

- Make a recommendation for a third-party certification for any contractors that are retrofitting homes as part of this program
- Identify a process and benchmarks for contractor meetings to discuss bulk pricing and services.
- Identify specifically what is offered at each stage of the interaction (i.e. initial visit, follow up visits)
- Identify how this network will create an effective, low-cost one-stop show for residents, including facilitation of incentives and rebates.
- Identify the process for how contractors are assigned to jobs, when contractors should be available (weekdays, evenings, weekends), how new contractors are added to the program in an equitable way, and how quality work is assured.
- Identify how liability will be addressed, including bonding of contractors, worker's compensation, lien waivers, and protection of properties.
- Develop or coordinate with existing local green jobs training programs.

Data, evaluation and quality assurance

The success of this program will hinge on the ability to ensure quality work and track results. The city is currently under contract with Symbiotic Engineering to develop a parcel-based data tracking mechanism for our programs. This database uses utility bill data to measure greenhouse gas emissions reductions. The design of this component should include the following:

- What data should be collected? Is sampling an appropriate methodology? If so, how would this work?
- How will data be collected and at what frequency will it be transferred to the database?
- How the program be evaluated? The design should include a plan and budget for evaluation
- The city assumes that a certain number of case studies will be created; plans for this should be incorporated into the design.
- How will quality assurance be handled?

Recognition

Lastly, recognition has been identified as an important component to enhance the visibility and results for this program. This design of this component should include the recommendations in the following areas:

- Qualifications for recognition.
- Methods of meaningful recognition (e.g. yard signs, window stickers, etc)
- The city's role in creating recognition or a brand for housing.

Research

The following is a list of programs, cities, or organizations that the city has identified who have similar goals. We recommend that this list is included in the research that the consultant uses to inform the design:

- The Babylon Project (Long Island, NY)
- Main Street Efficiency
- Home Performance with ENERGY STAR
- Building Performance Institute /RESNET
- Conservation Services Group
- Palm Desert, CA
- Positive Energy
- Houston's – low-income door to door efforts
- 1BOG (1 Block off the Grid) /Sustainable Spaces Partnership Pilot program
- Affordable Comfort Institute's Thousand Home Challenge (Explore piloting this in Boulder, the city is interested in creating a competition to create a few case studies of deep energy reductions in Boulder)

ADDITIONAL SERVICES

Optional, additional proposal – Implementation and Delivery

At the consultant’s sole discretion, proposals may include a separate, severable proposal for implementation and delivery of the “Two techs and a truck” program. If this optional additional proposal is included it should address at least the following:

- Program administration and operation
- Recommendations for contractor training and certification
- Recommendations for auditor training
- Risk Identification and mitigation plans to address these risks
- Projected greenhouse gas emissions reduction results:
 - Efficiency measurement
 - Data collection
 - Quality assurance
 - Verification
 - Reporting
- Time line
- Project Management Structure outlining deliverables, who is responsible, how the project will be managed, timeline and budget to implement.
- Recommended role for the city of Boulder
- Budget for program implementation and associated greenhouse gas emissions reductions:
 - Per household
 - Per sector
 - Total

ITEMS PROVIDED BY CITY OF BOULDER

1. A City project manager
2. Background materials on Climate Action Plan and programs, as requested

PROCUREMENT SCHEDULE

Note: The city reserves the right to adjust this schedule as necessary.

TENTATIVE SELECTION SCHEDULE

RFP issued	September 18, 2009
Final RFP Questions(if any) Due	September 25, 2009
Final RFP Answers sent out	October 2, 2009
Proposal Responses Due	October 16, 2009
Finalist Selection	October 30, 2009
Finalist Interviews (please reserve these dates)...	November 2-6, 2009
Contractor Selection.....	November 9, 2009
Contract Negotiations Complete.....	November 16, 2009

PROJECT CONTACT INFORMATION

Upon release of this RFP, all consultant communications concerning the overall RFP should be directed to the RFP Coordinator listed below. Unauthorized contact regarding this RFP

with other city employees may result in disqualification. Any oral communications will be considered unofficial and non-binding on the city. Consultants should rely only on written statements issued by the RFP Coordinator.

Name: Project Coordinator
Yael Gichon*
Address: City of Boulder
Community Planning and Sustainability
P.O. Box 791
1777 Broadway
Boulder, Colorado 80306
Telephone: 303-441-3878
E-mail: gichony@bouldercolorado.gov

***NOTE:** Yael Gichon will be out of the office from 9/15/09-10/5/09. For communication during this time (including the question period) please contact:

Sarah Van Pelt
303-441-1914
vanpelts@bouldercolorado.gov

QUESTIONS REGARDING THE RFP

Interested parties who request clarification of the RFP requirements may submit written questions to the RFP Coordinator at any time up to 4 p.m. (MDT) on September 25, 2009. Written copies of all questions and answers will be provided to all consultants who have registered via the city's website. An email attachment sent to vanpelts@bouldercolorado.gov is fine. Letters sent via facsimile will be accepted at 720-564-2188.

PART II: Required Proposal Response

PROPOSAL MATERIALS (ENVIRONMENTAL PURCHASING POLICY)

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City encourages the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers. Firms are encouraged to print/copy on both sides of a single sheet of paper wherever applicable (if sheets are printed on both sides, it is considered to be two pages). Color is acceptable, but content should not be lost by black-and-white printing or copying.

PROPOSAL CONTENT

The proposal must contain all of the following information, in the same sequence as presented below. Each proposal should provide a straightforward and concise presentation adequate to satisfy the requirements of this RFP. Please limit length of proposal sections to the maximum pages noted.

1) Cover Letter

A cover letter explaining the design team and the project contact person(s) plus relevant contact information. Provide brief background experience, specific to this project, for the principal individuals who will work on this project. Provide a list of the sub-consultants intended to be hired for the project and relevant background experience. Provide a statement of staff time commitment to adhere to the targeted design/construction schedule. (Limit pages to the extent possible.)

2) Project Approach

A concise explanation of the design team's approach to the project is to be given in this section. Please include the following:

- Description of the design team relationships (one page maximum)
- Timeline of project milestones (one page maximum)
- Description of each major task that is anticipated for the project – purpose of task, number of hours required per staff member, and expected end product. (Limit pages to the extent possible.)
- Describe the products of the design development effort. Specifically, what will the city receive to document the process? (One page maximum.)
- Provide the fees for all the services described in the preceding pages, plus fees for additional services if needed. (Limit pages to the extent possible.)

FORM 1: ACCEPTANCE OF TERMS AND CONDITIONS

[Use this form to indicate exceptions that your firm takes to any terms and conditions listed in the Professional Services Boilerplate attached to this RFP, as well as the RFP itself. Proposals which take exception to the specifications, terms, or conditions of this RFP or offer substitutions shall explicitly state the exception(s), reasons(s) therefore, and language substitute(s) (if any) in this section of the proposal response. Failure to take exception(s) shall mean that the proposer accepts the conditions, terms, and specifications of the RFP.

If your firm takes no exception to the specifications, terms, and conditions of this RFP, please indicate so.

List exceptions here:

Signed,

By: _____

Title

Date

For: _____

APPENDICES

CITY OF BOULDER – Professional Services Contract

SERVICES CONTRACT

THIS CONTRACT made and entered into this ____ day of _____, 20__, by and between the CITY OF BOULDER, hereinafter referred to as the "City," and _____, hereinafter referred to as the "Contractor."

RECITALS:

WHEREAS, the City is desirous of contracting with one company for _____ for the period from _____ to _____, inclusive; and

WHEREAS, the Contractor has submitted the lowest and best bid for said _____.

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein stated, the parties agree as follows:

1. The City agrees to use the Contractor's services in connection with _____ needed and required by it during the period from _____ to _____, inclusive, and the Contractor covenants and agrees to provide said services as required and requested by the City during said period.

2. It is agreed that the request for bids, the specifications, and the Contractor's proposal, copies of which are hereto attached, are hereby made a part of this Contract, and each of the parties hereto agrees to carry out and perform all of the provisions of said documents upon its part to be performed. In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- A) The Contract;
- B) The request for bids and specifications; and
- C) The Contractor's proposal.

3. City agrees to pay for said services and materials the prices as set forth in the Contractors proposal.

4. Payment by the City shall be made upon receipt of invoices from the Contractor, which shall be subject to verification as to the cost of materials used, and the time spent in performance of the services. The City shall not be liable for payment for services or materials which do not conform to the Contract documents.

5. The work to be done under this Contract and under the specifications above referred to shall include the furnishings of all materials, labor and equipment therefor.

6. The Contractor agrees that it shall perform all said services and supply the necessary materials to the entire satisfaction of the director of the department requesting said work. All material used and all labor performed shall be subject to the inspection and approval or rejection of the director of the department requesting said work, or his or her authorized agent.

7. The City hereby reserves the right to decide all questions arising as to the proper performance of said services, and as to the quality of the materials used. In the event that the City shall determine that the services are not being performed in accordance with the terms of this Contract, or, if the services be wholly, or in part, negligently, or improperly performed, then written notice of such defect or defects shall be given to the Contractor.

In the event that such defect or defects are not remedied within a reasonable time from the date notice is given, the City may, at its option, declare the Contractor to be in default, either as to the particular work performed and declared to be defective, or as to the entire Contract. In the event the City should declare the Contract to be in default only as to the particular work performed and declared defective, then the City may relet such portion and the costs incurred in consequence of such default may be applied in payment of any money due and owing to the Contractor. If there shall not be a sufficient sum due from the City, then in such case, the costs incurred shall be a just claim against the Contractor and shall be recoverable in any court of competent jurisdiction.

In the event that a default is declared as to work performed and declared defective, it is agreed and understood that such declaration of default shall not in any way relieve the Contractor from any liability for non-performance of the covenants and agreements of this Contract, but the same shall be and remain valid and binding obligations against the Contractor. As to work not declared to be in default, Contractor agrees to complete the same under the terms of this Contract.

8. Contractor agrees to procure and maintain in force during the terms of this Agreement, at its own cost, the following minimum coverages:

A. Workers' Compensation and Employers' Liability

- a) State of Colorado: Statutory
- b) Applicable Federal: Statutory
- c) Employer's Liability: \$100,000 Each Accident
\$500,000 Disease-Policy Limit
\$100,000 Disease-Each Employee
- d) Waiver of Subrogation

B. Commercial General Liability

- i. Bodily Injury & Property Damage General Aggregate Limit \$1,000,000
- ii. Personal & Advertising Injury Limit \$1,000,000
- iii. Each Occurrence Limit \$1,000,000

The policy shall be on an Occurrence Form and include the following coverages: Premises Operations; Personal and Advertising Injury; Medical Payments; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

C. Commercial Automobile Liability Limits

- a) Bodily Injury & Property Damage Combined Single Limit \$1,000,000
- b) Medical Payments per person \$ 5,000
- c) Uninsured/Underinsured Motorist \$ 100,000

Coverage is to be provided on Business Auto, Garage, or Truckers form. Coverage provided should be at least as broad as found in ISO form CA0001 (BAP), CA0005 (Garage) or CA0012 (Trucker) including coverage for owned, non-owned, & hired autos.

Prior to the execution of this Contract by the City, the Contractor shall forward Certificates of Insurance to Purchasing. The insurance required shall be procured and maintained in full force and effect for the duration of the Contract. Certificate Holder shall be the City of Boulder at 1777 Broadway, P.O. Box 791, Boulder, CO 80306.

All insurance policies (except Workers Compensation) shall include City of Boulder and its elected officials and employees as additional insureds as their interests may appear. The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto Liability.

The City requires that all policies of insurance be written on a primary basis, non-contributory with any

other insurance coverages and/or self-insurance carried by the City.

The City of Boulder reserves the right to reject any insurer it deems not financially acceptable by insurance industry standards. Property and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of not less than A- VI.

Certificates of insurance on all policies shall give the City of Boulder written notice of not less than thirty (30) days prior to cancellation or change in coverage.

9. The Contractor agrees to indemnify and save harmless the City against any and all damages to property or injuries to or death of any person or persons arising from its performance of this Contract, including property and employees or agents of the City and shall defend, indemnify and save harmless the City from any and all claims, demands, suits, actions or proceedings of any kind or nature, including without limitation Worker's Compensation claims, of or by anyone whomsoever in any way resulting from or arising out of the Contractor's operations in connection with this Contract, including operations of sub-contractors and acts or admissions of employees or agents of the Contractor or its sub-contractor.

10. Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended.

11. The relationship between the Contractor and the City is that of an independent contractor. The Contractor shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. The Contractor shall not be deemed to be, nor shall it represent itself as, an employee, partner, or joint venturer of the City. No employee or officer of the City shall supervise the Contractor. **The Contractor is not entitled to worker's compensation benefits and is obligated to directly pay federal and state income tax on money earned under this Contract.**

12. The Contractor agrees that it will not cause or permit any claims in the nature of mechanic's liens for materials or labor placed or used under the terms of this Contract to be filed or served upon the City; and the Contractor hereby guarantees to indemnify and save harmless the City against any and all such claims for liens which may be filed or asserted against any of the work done hereunder.

13. The City agrees that the Contractor shall not be liable for any delay or non-performance due to the failure of the source of supply from which the Contractor obtains the materials to make delivery, or due to delays in transportation, labor strikes, floods, fires, acts of God, or to the acts or regulations of any governmental entity or any branch or agency thereof. The Contractor however, shall not be excused from liability for delays or non-performance caused by events or conditions within its control, nor for delays or non-performance which it could have foreseen and avoided, prevented or significantly ameliorated by exercising reasonable prudence or diligence, nor for any delays or non-performance caused in whole or in part by the Contractor itself.

14. In the event of delay or non-performance by the Contractor for any reasons set forth in paragraph 13 of this Contract, or for any other reason, the City shall be free to obtain said services from other sources without incurring liability or damages to the Contractor therefor.

15. The Contractor shall not assign this Contract without the written consent of the City, which it may withhold at its sole discretion.

16. This Contract shall be subject to the provisions of the Charter, Municipal Code and Ordinances of the City of Boulder.

17. This Contract may be terminated by either party if it has been materially breached by the other party and proper notification is tendered. Notification of intent to terminate this Contract shall be given in writing thirty (30) days prior to the date of termination.

18. The City reserves the right to extend the Contract for additional one year terms, and may grant up to four one year extensions if mutually agreeable by both parties and conditions remain constant. Contract renewals

shall be in writing and signed by both parties.

19. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the City and the Contractor that any such party or entity, other than the City or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

20. The waiver of any breach of a term, provision, or requirement of this Contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

21. This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by the City pursuant to City rules.

22. The Contractor certifies that the Contractor shall comply with the provisions of section 8-17.5-101 et seq., C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

The Contractor represents, warrants, and agrees (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this contract through participation in either the E-Verify or the Department Program; (ii) that the Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while the public contract for services is being performed; and (iii) if the Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

- a) Notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor further agrees that it shall comply with all reasonable requests made in the course of an investigation under section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or section 8-17.5-101 et seq., C.R.S. the City may terminate this contract for breach and the Contractor shall be liable for actual and consequential damages to the City.

23. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the City's obligations under this Agreement are subject to annual appropriation by the City Council of the City. Any failure of a City Council annually to appropriate adequate monies to finance the City's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the Contractor of any failure to appropriate such adequate monies.

24. Contractor warrants that the individual executing this Contract is properly authorized to bind the Contractor to this Contract.

IN WITNESS WHEREOF, the parties hereto have signed this Contract effective as of the day and year first written above.

CONTRACTOR

By: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me, a notary public, this _____ day of _____, 20____, by _____, as _____.

Witness my hand and official seal.

My commission expires:

(SEAL)

Notary Public

CITY OF BOULDER

ATTEST:

City Manager

City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

City Attorney's Office