

## Peer Review Comparison & Recommendation

EPS				
	Project Manager	Analyst	Research/Production	
Billing Rate	\$ 210	\$ 115	\$	90
Labor Hours	60	84		44
Total	\$ 12,600	\$ 9,660	\$	3,960
Misc Costs			\$	250
Project Total			\$	26,470
Total Hours				188

ERA				
	Project Manager	Analyst	Research/Production	
Billing Rate	\$ 240	\$ 265	\$	135
Labor Hours	58	11		49
Total	\$ 13,920	\$ 2,915	\$	6,615
Travel & Reimbursable Expenses			\$	2,700
Project Total			\$	26,150
Total Hours				118

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## Peer Review Comparison & Recommendation

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- Both firms have similar scopes of work & experience
- Total price is similar, although billable hours and rates are different
- Both firms gave a projected completion of 45 days after receiving a notice to proceed
  - Both firms agreed to condense this delivery date to 30 days after notice to proceed
- EPS is local and is already familiar with DUS
- ERA is based in San Francisco and would require travel
  - May not be very familiar with Colorado specific tax-increment
- Given the similarities and equal qualifications it is recommended to proceed with EPS due to them being a local firm
  - Given the time constraints for this Project EPS would be able to begin work quickly and would not require the learning process for DUS

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Development Budget

Category	( 6/4/2009 ) Initial Budget	Revisions	Revised Budget	K Amount	Non-K Est	Pd To Date	Est To Compl	Ttl Forecast	Variance
Hard Costs									
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
Hard Cost Contingency	0	0	0	0	0	0	0	0	0
Total Hard Costs	0	0	0	0	0	0	0	0	0

Soft Costs

TIFIA Application Fee	30,000	0	30,000	0	30,000	0	30,000	30,000	0
TIFIA Transaction Fee	300,000	0	300,000	0	300,000	0	300,000	300,000	0
TIFIA Processing Fee	75,000	0	75,000	0	75,000	0	75,000	75,000	0
TIFIA Project Monitoring Fee	40,000	0	40,000	0	40,000	0	40,000	40,000	0
TIFIA Annual Service Fee	11,000	0	11,000	0	11,000	0	11,000	11,000	0
RRIF Application Fee	200,000	0	200,000	0	200,000	85,000	115,000	200,000	0
S&P Rating Fee	100,000	0	100,000	0	100,000	0	100,000	100,000	0
Financial Advisor, incl Reimb	105,000	0	105,000	0	105,000	69,557	35,443	105,000	0
D & O Insurance	60,000	0	60,000	0	57,156	57,156	0	57,156	2,844
Legal Fees Thru 4/30/09	500,000	0	500,000	0	499,183	499,183	0	499,183	817
Legal Fees - May, 2009	100,000	0	100,000	0	87,558	87,558	(0)	87,558	12,442
Owners Rep, Jan - Apr, 2009	200,000	0	200,000	0	200,000	0	200,000	200,000	0
Owner's Rep - May, 2009	75,000	0	75,000	0	75,000	0	75,000	75,000	0
Developer Fee, Jan - Apr, 2009	700,000	0	700,000	0	700,000	700,000	0	700,000	0
Peer Design Review	0	12,500	12,500	0	12,500	0	12,500	12,500	0
Historic Assessment Grant Match	0	33,000	33,000	0	33,000	0	33,000	33,000	0
Public Process	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0
Bank Fees	0	0	0	0	0	0	0	0	0
Interest Income	0	0	0	0	0	0	0	0	0
Soft Cost Contingency	504,000	(45,500)	458,500	0	0	0	0	458,500	0
Total Soft Costs	3,000,000	0	3,000,000	0	2,525,397	1,498,453	1,026,944	2,525,397	474,603
Total Project Costs	3,000,000	0	3,000,000	0	2,525,397	1,498,453	1,026,944	2,525,397	474,603

Notes

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Reconciliation To Books

Loan From CCD	1,000,000
Loan From RTD	1,500,000
Transfer To Construction Account to Cover Bank Fee Float	(1,307)
Interest Income	1,172
	0
	0
Total Sources Per Books	2,499,865
Total Costs Per Tracking	1,498,453
Cash On Hand at 8/31/09 (Organizational Account)	1,001,412

DUSPA Organizational Budget

Project Cost Tracking

As Of 09/30/09

Detail By Vendor

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Vendor	Category	K Amount	Non-K Est	Pd To Date	Est To Compl	Ttl Forecast	Comments
Marsh	D & O Insurance	▼	57,156	57,156	0	57,156	thru 5/1/10
Federal RR Admin	RRIF Application Fee	▼	85,000	85,000	0	85,000	
TIFIA Application Fee	TIFIA Application Fee	▼	30,000	0	30,000	30,000	
TIFIA Transaction Fee	TIFIA Transaction Fee	▼	300,000	0	300,000	300,000	
TIFIA Processing Fee	TIFIA Processing Fee	▼	75,000	0	75,000	75,000	
TIFIA Project Monitoring Fee	TIFIA Project Monitoring	▼	40,000	0	40,000	40,000	
TIFIA Annual Service Fee	TIFIA Annual Service Fee	▼	11,000	0	11,000	11,000	
RRIF Application Fee	RRIF Application Fee	▼	115,000	0	115,000	115,000	
S&P Rating Fee	S&P Rating Fee	▼	100,000	0	100,000	100,000	
Alex Brown Financial Advisor	Financial Advisor, Ind Real	▼	105,000	69,557	35,443	105,000	
Hogan & Hartson	Legal Fees Thru 4/30/09	▼	412,255	412,255	0	412,255	
Bookhardt & O'Toole	Legal Fees Thru 4/30/09	▼	86,928	86,928	0	86,928	
Hogan & Hartson	Legal Fees - May, 2009	▼	64,603	64,603	(0)	64,603	
Bookhardt & O'Toole	Legal Fees - May, 2009	▼	22,955	22,955	0	22,955	
Owners Rep, Jan - Apr, 2009	Owners Rep, Jan - Apr, 2	▼	200,000	0	200,000	200,000	
Owner's Rep - May, 2009	Owner's Rep - May, 2009	▼	75,000	0	75,000	75,000	
Developer Fee, Jan - Apr, 2009	Developer Fee, Jan - Apr	▼	700,000	700,000	0	700,000	
Peer Design Review	Peer Design Review	▼	12,500		12,500	12,500	
Historic Assessment Grant Match	Historic Assessment Grant	▼	33,000	0	33,000	33,000	
Public Process	Public Process	▼	0	0	0	0	
		▼	0	0	0	0	
		▼	0	0	0	0	
		▼	0	0	0	0	
		▼	0	0	0	0	
		▼	0	0	0	0	
		▼	0	0	0	0	
		▼	0	0	0	0	
		▼	0	0	0	0	
Bank Fees	Bank Fees	▼	0	0	0	0	
Interest Income	Interest Income	▼	0	0	0	0	
Soft Cost Contingency	Soft Cost Contingency	▼	0	0	0	0	
			0	2,525,397	1,498,453	1,026,944	2,525,397
Check			0	0	0	0	0



DENVER UNION STATION  
PROJECT COST TRACKING

As Of 09/30/09

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VENDOR	CATEGORY	K AMOUNT	NON K EST	PD TO DATE	EST TO COMPL	TTL FORECAST	COMMENTS
Kiewit	Genl GMP	336,404,275	0	5,364,729	331,139,546	336,404,275	
Asbestos	Asbestos		300,000		300,000	300,000	
Contaminated Soil	Contaminated Soil		3,500,000		3,500,000	3,500,000	
Utility Relocates	Utility Relocates		2,000,000		2,000,000	2,000,000	
Dewatering Treatment	Dewatering Treatment		425,000		425,000	425,000	
Blue Lockers	Blue Lockers		300,000		300,000	300,000	
RTD Furniture for Sales & Marketing	RTD Furniture for Sales & Marketing		150,000		150,000	150,000	
Shuttle Starter Booth	Shuttle Starter Booth		50,000		50,000	50,000	
Ticket Vending Machines	Ticket Vending Machines		750,000		750,000	750,000	
Additional Snow Melt	Additional Snow Melt		0		0	0	
EIS Mitigation	EIS Mitigation		650,000		650,000	650,000	
Water & Sewer Stub	Water & Sewer Stub		500,000		500,000	500,000	
Water & Sewer Taps	Water & Sewer Taps		669,660		669,660	669,660	
Fire Suppression in Train Room	Fire Suppression in Train Room		0		0	0	
HOV Detour	HOV Detour		350,000		350,000	350,000	
RR Flagging	RR Flagging		1,000,000		1,000,000	1,000,000	
Threat and Vulnerability Requirements	Threat and Vulnerability Requirements		2,000,000		2,000,000	2,000,000	
Parking Spaces in Lot G Garage	Parking Spaces in Lot G Garage		4,500,000		4,500,000	4,500,000	
Addl Amtrak & Ski Train Requirement	Addl Amtrak & Ski Train Requirement		1,500,000		1,500,000	1,500,000	
Federal Railroad Administration	FINANCING COSTS		1,000,000	85,000	915,000	1,000,000	RRIF Investigative Charges
Arch/Eng Thru May, 2009	Arch/Eng Thru Apr, 2009		12,023,088		12,023,088	12,023,088	
Public Process (CRL)	Public Process (CRL)		544,865		544,865	544,865	
RTD Staff Costs	RTD Staff Costs		419,543		419,543	419,543	
USNC Developer Fees thru Dec, 2008	USNC Developer Fees thru Dec, 2008		4,200,000		4,200,000	4,200,000	
Kiewit Preconstruction Costs	Kiewit Preconstruction Costs		1,546,717		1,546,717	1,546,717	
18th Street Tunnel	18th Street Tunnel		1,824,589		1,824,589	1,824,589	
Xcel/Denver Water Early Utility Relocates	Xcel/Denver Water Early Utility Relocates		1,520,798		1,520,798	1,520,798	
Early Environmental Work	Early Environmental Work		3,979,900		3,979,900	3,979,900	
EIS Prep (PB)	EIS Prep (PB)		671,521		671,521	671,521	
Systems Design to 30%	Systems Design to 30%		2,332,271		2,332,271	2,332,271	
CM Office Space	CM Office Space		600,000		600,000	600,000	
RTD Construction Mgmt Fees	RTD Construction Mgmt Fees		11,020,526		11,020,526	11,020,526	
Union Station Overhead	Union Station Overhead		2,000,000		2,000,000	2,000,000	
PB Amendment #13	PB Amendment #13 (Jan-Apr, 2009 Design)		5,200,000		5,200,000	5,200,000	
Comm at LRT	Comm at LRT		500,000		500,000	500,000	
CRT Signals	CRT Signals		12,000,000		12,000,000	12,000,000	
Shuttle Vehicles	Shuttle Vehicles		1,905,000		1,905,000	1,905,000	
Insurance	Insurance		5,928,897		5,928,897	5,928,897	
March	Insurance		211,114	285,622	(74,508)	211,114	Builders Risk thru 5/1/13
March	Insurance		129,593	129,593	0	129,593	Pollution Lib thru 5/1/14
March	Insurance		1,230,396	1,421,165	(190,769)	1,230,396	OCIP thru 11/1/13
Legal Fees	Legal Fees		1,413,259		1,413,259	1,413,259	
Hogan & Harrison	Legal Fees		476,858	476,858	0	476,858	thru 5/31/09
Bookhardt & O'Toole	Legal Fees		109,883	109,883	0	109,883	thru 5/31/09
Financial Advisor	Financial Advisor		140,000		140,000	140,000	
Alex Brown Consulting	Financial Advisor		105,000	69,556	40,444	110,000	Est \$5k for reimb
Directors & Officers Insurance	Directors & Officers Insurance		182,844		182,844	182,844	D&O thru 5/1/10
March	Directors & Officers Insurance		57,156	57,156	0	57,156	
Bond Counsel	Bond Counsel		400,000		400,000	400,000	
DUS Renovation	DUS Renovation		17,000,000		17,000,000	17,000,000	
Owner's Rep Fees	Project Management Fees		5,940,000		5,940,000	5,940,000	
Permits/Fees	Permits/Fees		5,000,000		5,000,000	5,000,000	
Public Art	Public Art		2,000,000		2,000,000	2,000,000	
USNC Dev Fees Starting Jan, 2009	USNC Developer Fees starting Jan, 2009		6,200,000	700,000	5,500,000	6,200,000	
General & Admin	General & Admin Costs		99,923		99,923	99,923	
Vettra Bank	General & Admin Costs		557	557	0	557	Checks & Analysis
Amtrak Storage Truck	Amtrak Storage Truck		2,000,000		2,000,000	2,000,000	
CML	CML Land Purchase		11,017,420		11,017,420	11,017,420	
Coors Field/Light Bulb/Parking Lot	Coors Field/Light Bulb/Parking Lot		1,000,000		1,000,000	1,000,000	
Ice House	Ice House		500,000		500,000	500,000	
Temporary Easements	Temporary Easements		500,000		500,000	500,000	
	DUSPA COSTS:		0		0	0	
	Insurance		1,413,259		1,413,259	1,413,259	
	Dewatering Treatment		0		0	0	
	Additional Snow Melt		0		0	0	
	Temporary Easements		0		0	0	
	Temporary Easements		0		0	0	
	Temporary Easements		0		0	0	
	Legal Fees		0		0	0	
	Legal Fees		0		0	0	
	Temporary Easements		0		0	0	
	Temporary Easements		0		0	0	
	Temporary Easements		0		0	0	
	PB Amendment #13 (Jan-Apr, 2009 Design)		0		0	0	
	Temporary Easements		0		0	0	
			0		0	0	
			0		0	0	
			0		0	0	
	Bond Counsel		0		0	0	
	DUS Renovation		0		0	0	
	Temporary Easements		0		0	0	
	Temporary Easements		0		0	0	
	Temporary Easements		0		0	0	
	Temporary Easements		0		0	0	
	Legal Fees		0		0	0	
	Temporary Easements		0		0	0	
			0		0	0	
	Check	336,509,275	0	143,476,378	8,600,119	471,385,534	479,985,653

**DENVER UNION STATION PROJECT AUTHORITY  
PUBLIC INVOLVEMENT CONSULTANT AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of October, 2009, by and between the **DENVER UNION STATION PROJECT AUTHORITY**, a Colorado non-profit corporation and instrumentality of the City and County of Denver, Colorado authorized to do business in the State of Colorado, hereinafter referred to as the “OWNER,” and CRL Associates, Inc., hereinafter referred to as the “CONSULTANT.”

**RECITALS:**

1. Denver Union Station Project Authority (“DUSPA”) was created by the City and County of Denver, Colorado (the “City”) by ordinance No. 334, Series 2008 for the purpose of financing, acquiring, owning, equipping, designing, constructing, renovating, operating, maintaining and taking such other action as necessary with respect to the redevelopment of the Denver Union Station (“DUS”) building and its immediately surrounding environs as a multi-modal transportation center to serve as the future hub for several transportation modes in the City’s metropolitan area (the “Project”).

2. DUSPA desires the Consultant to act as its representative in performing and overseeing DUSPA’s public affairs tasks and public outreach efforts including coordination of external communications and distribution of general and specific Project information.

3. The Consultant’s duties under this Agreement are in addition to certain requirements as set forth in multiple agreements (“Project Agreements”) among or between the City, the Regional Transportation District (“RTD”), the Colorado Department of Transportation (“CDOT”), the Denver Regional Council of Governments (“DRCOG,” which together with the City, RTD, and CDOT are referred to herein as the “Partner Agencies”), the Union Station Neighborhood Company (“USNC” or “Master Developer”), one or more metropolitan districts

that have been formed to construct certain Project elements (the “Metropolitan District”), the Downtown Denver Development Authority (the “DDA”), and Kiewit Western Company (the “Design-Builder”), all of which will perform certain public involvement and public outreach efforts as appropriate to represent their interests.

4. The Owner’s obligations will also be subject to the provisions of a bond indenture of trust for senior debt that is anticipated to be issued to fund Project costs, Transportation Infrastructure Finance and Innovation Act (“TIFIA”) loan or grant requirements, and/or Railroad Rehabilitation and Improvement Financing (“RRIF”) loan or grant requirements and any other state or local requirements that may apply as a result of grants being made available for the Project. The Owner’s obligations under this Agreement may become subject to additional requirements due to the financing of the Project which may result in successor or additional administrators being appointed or obligations being incurred. “Financial Closing,” as such term is used herein, shall occur upon the financial closing and receipt of proceeds from the TIFIA, RRIF or bond fund financing to fully fund the costs of the Project.

5. Consultant is also providing public involvement services for the Project on behalf of RTD and the Design-Builder. Consultant is ready, willing and able to provide public involvement services on behalf of the Owner as well.

6. Consultant’s duties will include coordination of the public information and public outreach efforts of the Partner Agencies, the USNC, the DDA and the Design-Builder as well as public involvement services on behalf of DUSPA for the Project.



## **AGREEMENTS:**

### **ARTICLE I.**

#### **COORDINATION AND LIAISON:**

The President of DUSPA is the officer of the Owner who is responsible for authorizing and approving the work performed under this Agreement. The Owner hereby designates its Owner's Representative, Bill Mosher, to act on its behalf for the purpose of administering, coordinating and approving the services performed by the Consultant under this Agreement.

### **ARTICLE II.**

#### **GENERAL RESPONSIBILITIES OF THE CONSULTANT:**

The following provisions shall apply to all services rendered by the Consultant under this Agreement.

1. The parties hereunder acknowledge that Consultant has provided consulting services to RTD, USNC and other stakeholders in the Project and that Consultant is not prohibited in any way from continuing to provide such services so long as the provision of such does not interfere or conflict with Consultant's performance of its obligations related to the Project hereunder. The Partner Agencies, the Design-Builder and the Master Developer each have public involvement obligations for the Project in addition to DUSPA. Consultant shall be responsible for coordination of public involvement efforts for the Partner Agencies, Design-Builder and Master Developer in addition to performing public involvement efforts on behalf of Owner.

2. Neither the Consultant nor any sub-consultant shall have other interests which conflict with the interests of the Owner related to the sale or promotion of equipment or material which may be used on the Project or the sale or leasing of any property on which the

Project will be constructed, and the Consultant shall make written inquiry of all of its sub-consultants concerning the existence of or potential for such conflict. The Consultant shall execute a Standards of Conduct and Conflicts of Interest Policy in substantially the same form as that executed by the Board Members of the Owner.

### **ARTICLE III.**

#### **BASIC SERVICES:**

The Basic Services of Consultant shall include public affairs and public outreach including development of plans for approval by the Owner that set forth the program and the tasks to be undertaken by the Consultant that will achieve the public communication and outreach goals of the Owner (the “Basic Services”). These plans shall be referred to as the DUS Public Information Plan and the Communications Work Plan as described in **Exhibit A-1**. Basic Services included in the public affairs and public outreach programs are set forth in **Exhibit A-1** hereto. In the event the program and goals of the Owner change and additional services beyond the scope of the Basic Services are necessary (the “Additional Services”), such Additional Services shall be considered outside of the scope of work identified in **Exhibit A-1**. Consultant shall not perform any Additional Services and shall not be compensated for Additional Services without prior written approval of Owner.

### **ARTICLE IV.**

#### **OWNER’S RESPONSIBILITY:**

**A.** The Owner shall provide available information for the Project in the Owner’s possession or control to the Consultant and endeavor to maintain a free flow of information to Consultant as it becomes available. The Consultant shall exercise reasonable judgment in assessing the accuracy and completeness of such information.

**B.** The Owner shall make payment to the Consultant within thirty (30) of the receipt of monthly invoices from the Consultant.

## **ARTICLE V.**

### **OWNERSHIP OF DOCUMENTS:**

**A.** All documents prepared by the Consultant under this Agreement, when delivered to and accepted by the Owner, shall become the property of the Owner. All documents of the Owner are subject to the Colorado Open Records Act, C.R.S. §24-72-203.

**B.** The Owner shall have unlimited rights in the ownership of all documents, notes and other work product developed in the performance of the Agreement.

## **ARTICLE VI.**

### **TERM AND TERMINATION:**

**A.** The Term of this Agreement shall commence upon the date hereof and extend through December 31, 2010. The Owner shall have the option to extend this Agreement for five (5) consecutive one (1) year terms at its sole discretion. The parties agree that the scope and fee for each extension of the term shall be re-negotiated between the parties.

**B.** Nothing herein shall be construed as giving the Consultant the right to perform the Basic Services contemplated under this Agreement beyond the time when its Basic Services become unsatisfactory to the Owner.

**C.** If the Consultant shall be discharged or if the Consultant becomes unable to serve under this Agreement, then the Consultant shall be paid only for that portion of the work which shall have been satisfactorily completed at the time of dismissal, direction to cease work, or the time when the Consultant became unable to serve under the Agreement.

**D.** The Owner may, for convenience, cancel and terminate this Agreement by giving not less than thirty (30) days prior written notice to the Consultant, which notice shall state the date of cancellation and termination. The Consultant may, for convenience, cancel and terminate this Agreement by giving not less than sixty (60) days prior written notice to the Owner, which notice shall state the date of cancellation and termination.

**E.** If the Consultant's Basic Services are terminated, postponed or revised, or if it shall be discharged before all the work contemplated has been completed, or if work for any reason shall be stopped or discontinued, the Consultant shall be paid only for the months of service, pro-rata if less than one month, for work which has been satisfactorily completed at the time of such dismissal, termination, postponement, revision or stoppage.

**F.** If this Agreement is terminated for any reason, the Consultant shall promptly deliver to the Owner all reports, contact lists, press releases and other documents relating to the Basic Services provided under this Agreement.

## **ARTICLE VII.**

### **COMPENSATION:**

The Consultant shall provide professional services for the Project, and the Owner shall compensate the Consultant in accordance with the terms and conditions of this Agreement.

**A. Basic Services.** The Owner agrees to pay the Consultant, as compensation for its Basic Services as defined below, a lump sum fee amount of \$142,690.00 (the "Lump Sum Fee Amount") over the term of this Agreement paid in incremental monthly installments and in accordance with the amounts set forth in **Exhibit A-2**.

Payment for Period from October 1, 2009 through December 31, 2009. In the months of October 2009, November 2009 and December 2009 the Consultant shall be paid a maximum of

\$9,700.00, \$9,660.00 and \$9,660.00, respectively, pursuant to invoices submitted to the Owner requesting payment for services rendered in the prior month. Such maximum amounts shall be inclusive of reasonable, approved and documented administrative expenses.

Payment Subsequent to Financial Closing. On or before the 20<sup>th</sup> day of each month following Financial Closing (as defined below), the Consultant shall submit an invoice to the Owner requesting payment based on hours worked but not exceeding the maximum monthly amount of \$9,510.00 as set forth in **Exhibit A-2**. Amounts not billed to the maximum amount on a monthly basis may be carried forward to subsequent monthly billing periods so long as the Lump Sum Fee Amount is not exceeded.

Consultant shall provide separate invoices for all work that does not qualify for federal funding pursuant to separate work order, including such certain work related to off-site storm sewer improvements and the Project's historic building structure. Other aspects of the project, if identified as non-qualifying for federal funding, shall also be invoiced separately.

**B. Owner's Obligations Beyond 2009 are Subject to Financing.** Notwithstanding anything to the contrary contained in this Agreement, with the exception of the payments to Consultant for the months of October, November and December of 2009 (which payments shall be made one month in arrears, and within 30 days of receipt of such invoice), the obligations of Owner to pay the Consultant its fees hereunder arise only upon Financial Closing and only at such time as funds from financing or other sources authorized for such use are made available to the Owner. Owner shall have no liability for payment hereunder other than out of funds received by Owner from financing or other sources from which these payments are an authorized use.

## **ARTICLE VIII.**

### **FEDERAL REQUIREMENTS:**

By entering into this Agreement, the Consultant hereby certifies to the truthfulness and accuracy of each statement of any certification and disclosure as set forth in **Exhibit B** hereto and the Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to the certification and disclosure as set forth in **Exhibit B** hereto. The Consultant also agrees that those provisions set forth in **Exhibit B** hereto are hereby incorporated by reference as though fully set forth herein.

## **ARTICLE IX.**

### **TIME IS OF THE ESSENCE:**

The parties agree that in the performance of the term, conditions and requirements of this Agreement by the Consultant, time is of the essence.

## **ARTICLE X.**

### **MISCELLANEOUS PROVISIONS:**

**A. Status of Consultant.** It is understood and agreed that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform Basic Services for limited periods of time, and it is not intended, nor shall it be construed, that the Consultant, or any member of its staff or any sub-consultant, is an employee or officer of the Owner for any purpose whatsoever.

**B. Rights and Remedies Not Waived.** No payment by the Owner shall constitute a waiver of any breach of covenant or default which may then exist on the part of the Consultant.

No assent, expressed or implied, to any breach of the Agreement shall be held to be a waiver of any later or other breach.

**C. Subject to Local Laws; Venue.** Each and every term, condition or covenant contained herein is subject to and shall be construed in accordance with the provisions of Colorado law, and applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

**D. Nondiscrimination in Employment.** In connection with its performance of this Agreement, the parties hereto agree not to refuse to hire, nor to discharge, promote or demote, nor to discriminate in matters of compensation against any person otherwise qualified solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability; and further agree to insert the foregoing provision in all subcontracts hereunder.

**E. Assignment by Owner.** The Consultant agrees that this Agreement shall be fully and freely assignable by the Owner without the consent of any other person and that if the Owner does assign this Agreement, Consultant shall fully perform the agreements contained herein. Should an Event of Default or Event of Non-Appropriation as defined in a bond indenture of trust or in any subsequent agreement entered into by the Owner for purposes of financing the Project, the trustee may, in its full discretion, terminate this Agreement and the Consultant shall

be entitled to payment only from amounts legally allocated and available for the Project and only for work done prior to such termination.

**F. Assignment by Consultant.** The Consultant shall not assign any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the Owner, which consent and approval may be withheld in the absolute discretion of the Owner.

**G. Taxes, Charges and Penalties.** The Owner shall not be liable for the payment of taxes, late charges or penalties of any nature arising out of this Agreement.

**H. Indemnification by Consultant.** The Consultant agrees to release, defend, indemnify and save harmless the Owner and the Partner Agencies and their officers, agents and employees from any and all claims, damages, suits, costs, expenses, including reasonable attorney's fees and reasonable expert witness fees, liabilities, actions or proceedings of any kind or nature whatsoever, in any way directly resulting from or arising out of the Consultant's negligence in connection with this Agreement for the Project, including negligent acts or omissions of the Consultant's or its officers, employees, sub-consultants, invitees, contractors and agents. The Consultant shall have no obligation to indemnify the Owner should any such losses, claims, damages and expenses result, in whole or in part, from acts, omissions, willful misconduct or gross negligence of the Owner, its officers, directors, contractors or agents.

**I. Indemnification by Owner.** The Owner agrees to release, defend, indemnify and save harmless the Consultant, its officers, employees, sub-consultants, invitees, contractors and agents from any and all claims, damages, suits, costs, expenses, including reasonable attorney's fees and reasonable expert witness fees, liabilities, actions or proceedings of any kind



or nature whatsoever, in any way directly resulting from or arising out of, the Owner's willful, wanton or grossly negligent performance in connection with this Agreement.

**J. Notices.** Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and other notices shall be made to:

Owner: Elbra Wedgeworth, DUSPA President  
c/o Hogan & Hartson LLP  
1200 17<sup>th</sup> Street, Suite 1500  
Denver, Colorado 80202  
Fax - 303.899.7333

With a copy to: Cole Finegan, Esq.  
Hogan & Hartson LLP  
1200 17<sup>th</sup> Street, Suite 1500  
Denver, Colorado 80202  
Fax – 303.899.7333

Dawn P. Bookhardt, Esq.  
Bookhardt & O'Toole  
999 18th Street, Suite 2500  
Denver, Colorado 80202  
Fax – 303.294.0723

Consultant: Maria Garcia Berry  
CRL Associates, Inc.  
1625 Broadway, Suite 700  
Denver, Colorado 80202  
Fax - 303.592.5460

With a copy to: Roger Sherman.  
CRL Associates, Inc.  
1625 Broadway, Suite 700  
Denver, Colorado 80202  
Fax - 303.592.5460

Said notices shall be delivered personally during normal business hours to the appropriate office, above, or by prepaid U.S. Certified Mail, Return Receipt Requested, delivered via overnight mail, or if such notice does not relate to a notice of default or notice of termination, by electronic transmission. Mailed notices shall be deemed effective upon deposit with the U.S. Postal

Service or delivery by overnight mail carriers. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered but such substitutions shall not be effective until actual receipt of written notification of such substitution.

**K. Disputes.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between Consultant and the President and Vice President of the Board of Directors of DUSPA and any other DUSPA director with authority to settle the controversy. Any person may give the other party written notice of any dispute not resolved in the normal course of business. The notice shall include a statement of the party's position and a summary of the rationale supporting that position. The parties shall meet within 7 days after delivery of the notice at a mutually acceptable time and place to attempt to resolve the dispute. If the dispute has not been resolved by negotiation as provided herein within 7 days after delivery of the initial notice of negotiation, the parties shall endeavor to settle the dispute by mediation within 30 days following the negotiation. The parties shall select a mediator from a panel of distinguished neutrals or the Judicial Arbitrator Group ("JAG"). Should the mediation regarding resolution of such dispute be deemed inconclusive by either party, or if the dispute has not been resolved by nonbinding means as provided herein within [60] days of the initiation of such procedure, this Agreement does not preclude either party from initiating other means of dispute resolution, including court action. The parties agree that any proceeding, regardless of its nature, including, arbitration, mediation or court action, shall take place in Denver, Colorado.

**L. Use, Possession or Sale of Alcohol, Drugs or Firearms.** To help ensure a safe, productive work environment, it is the policy of the Owner to prohibit the use, transportation and

possession of firearms, drugs and/or controlled substances, drug paraphernalia and alcoholic beverages on the Owner's premises or the site of the Project. Employees of the Consultant and its sub-consultants shall not perform services hereunder while under the influence of alcohol or any controlled substance, or while a measurable presence of alcohol or such substances has or can be shown by urine or blood test. Possession of a firearm by any employee of the Consultant while on the Owner's site is strictly prohibited, including having a firearm in any vehicle parked at or driving over the site. The Owner specifically reserves the right to carry out reasonable searches of individuals, their personal effects, and vehicles when entering on or leaving the site. The searches will be initiated without prior announcement. Submission to such a search is strictly voluntary; however, refusal may be cause for not allowing that individual on the job site. The Consultant shall notify its employees and sub-consultants of these prohibitions and their enforcement.

**M. Insurance.** The Consultant agrees to carry and maintain insurance as follows:

**1. Insurance Requirements**

a. The Consultant shall secure and deliver to the Owner at the time of execution of this Agreement, and shall keep in force at all times during the term of this Agreement, a comprehensive liability policy, including public liability and property damage, covering all operations conducted under this Agreement, including the following minimum amounts:

- (i) Business Automotive Liability Insurance or Comprehensive Auto Liability with a Combined Single Limit of \$1,000,000 each occurrence.
- (ii) Commercial General Liability Insurance with a limit of \$2,000,000 each occurrence and in the aggregate.

b. The Consultant and its sub-consultants shall carry and maintain sufficient Workers' Compensation Insurance on all employees to fully insure their responsibilities under Colorado law, and shall provide the Owner with certificates evidencing such coverage.

c. The Consultant shall require in any contract with its sub-consultants that its sub-consultants provide and maintain insurance with the same coverage and limits of coverage required of the Consultant by the Owner, as herein described and as evidenced by certificates of insurance. Alternatively, the Consultant must provide a project specific policy which includes all of its sub-consultants in the coverage.

d. The Consultant shall provide Waivers of Subrogation and Rights Recovery against the Owner and the City.

e. The certificates evidencing the existence of the policies set forth thereof, all in such form as the Owner may require, shall be delivered to the Owner upon execution of this Agreement. Each such certificate shall contain a valid provision or endorsement stating that the policy will not be canceled without the issuing company first endeavoring to provide thirty (30) days written notice to Denver Union Station Project Authority c/o Hogan & Hartson, 1200 17<sup>th</sup> Street, Suite 1500, Denver, Colorado 80202, as a certificate holder.

f. The insurance coverages required by this Agreement constitute the minimum requirements, but in no way lessen or limit the liability of the Consultant. The Consultant shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary.

**N. Effective Date.** Notwithstanding the dates of execution of this Agreement, the parties agree that the effective date for this Agreement is [October 1, 2009], and that all services performed subsequent to the effective date are subject to this Agreement. Any approved services performed prior to the effective date shall be paid upon receipt of invoice as specified herein.

**O. Agreement as Complete Integration - Amendments.** This Agreement 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 novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

**P. Examination of Records.** The Consultant agrees that any duly authorized representative of the Owner or the Partner Agencies, including the City Auditor, his employees and consultants, until the expiration of three (3) years after the final payment by the Owner under this Agreement, shall have access to, and the right to examine any directly pertinent books, documents, papers and records of the Consultant involving transactions related to this Agreement.

**Q. Paragraph Headings.** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

**R. Severability.** It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement, except for the provisions of this Agreement requiring that the Owner's liability is subject to funding and limiting the total amount to be paid by the Owner,

is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

**S. Legal Authority.**

1. The Consultant assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

2. The person or persons signing and executing this Agreement on behalf of the Consultant do hereby warrant and guarantee that he/she or they have been fully authorized by the Consultant to execute this Agreement on behalf of the Consultant and to validly and legally bind the Consultant to all the terms, performances and provisions herein set forth.

3. The Owner shall have the right, at its option, either to temporarily suspend or to permanently terminate this Agreement if there is a dispute as to the legal authority (i) of the Consultant to enter into this Agreement or (ii) of the person signing the Agreement on behalf of the Consultant to so sign this Agreement.

**T. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

**U. Partnering Agency's Status.** The Consultant understands and acknowledges that (a) the relationship of the Partner Agencies and the Owner via the Project Agreements is that of an independent non-profit corporation that serves as an instrumentality of the City and is not a relationship of partnership, joint venture, or principal agent and (b) the neither the City nor the

remaining Partner Agencies have undertaken nor have they assumed any responsibility or duty to the Owner or any third party with respect to the Owner’s obligations relating to the Project or this Agreement.

**DENVER UNION STATION PROJECT**

**AUTHORITY**

ATTEST:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

“OWNER”

**CRL ASSOCIATES, INC  
MARIA GARCIA BERRY**

ATTEST:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

“CONSULTANT”

## **EXHIBIT A-1**

### **PART A - BASIC SERVICES SCOPE OF WORK**

#### **TASK 1: PUBLIC AFFAIRS**

1. Develop DUS Public Information Plan
2. Coordinate all public information-related staffing, tasks and activities with Owner's Representative.
3. Provide monthly progress report of PI activities to Owner's Representative
4. Attend DUSPA Board Meetings
5. Attend Project Meetings as needed
6. Develop DUS project-related key messages and revise as needed
7. Develop fact sheets Project progress and emerging issues
8. Develop Project Media Guidelines; coordinate media responses with Owner's Representative in accordance with established media guidelines and protocol
9. Establish regular proactive communications with local media, including Spanish-language media; Provide background materials to reporters, editors and editorial boards; coordinate and assist with reporter and editorial briefings as needed
10. Write and distribute DUS project-related news releases and media advisories; review construction-related news releases and media advisories
11. Develop DUS Crisis Communications Plan in accordance with FasTracks Pubic Information Team, Kiewit and USNC; provide crisis communications training as needed

#### **Deliverables:**

- |                               |                                       |
|-------------------------------|---------------------------------------|
| 1. DUS Pubic Information Plan | 5. Project Media Guidelines           |
| 2. Monthly progress reports   | 6. News Releases and media advisories |
| 3. Project key messages       | 7. Crisis Communications Plan         |
| 4. Fact Sheets                |                                       |

Note: All deliverables are the property of DUSPA

#### **TASK 2: PUBLIC OUTREACH**

1. Supervise design consultant retained by Design-Builder to develop and re-launch project web site including Spanish-language section; coordinate with Owner's Representative and USNC to prepare site information architecture and establish updated "look and feel" web site
2. Supervise ongoing maintenance of project-related information on the web site
3. Engage online community using social media tools such as Facebook and Twitter to build and maintain communication with the community
4. Develop and distribute e-mail communications as needed
5. Coordinate with Owner's Representative regarding public inquiries and requests



6. Assist with public space/public realm meetings, including scheduling, logistics and notifications; prepare and distribute meeting updates via email as needed
7. Draft and send updates about project activities, progress and milestones; use a variety of communications methods to keep all stakeholders informed and engaged
8. Prepare and distribute quarterly newsletter
9. Provide Spanish translation services for public meetings and events and provide Spanish translation of collateral materials as needed
10. Establish partnerships with community-based groups to improve effective communication of core Project information; investigate cross promotional opportunities
11. Coordinate and schedule general outreach and Project-related presentations and tours; receive requests, schedule appropriate presenters, prepare handouts and presentation materials; deliver presentations/Project updates as needed
12. Provide collateral graphic design services as requested
13. Other public outreach efforts as directed by the Owner's Representative
14. Monitor RTD, city council, county commission and partner agency policy board agenda; attend meetings as necessary; coordinate city council and county commission updates and briefings as needed
15. Attend public meetings/events as needed

**Deliverables:**

- |                               |   |
|-------------------------------|---|
| 1. Stakeholder database       | 5. Communication Work Plan                |
| 2. Project updates            | 6. Meeting notices, agendas and summaries |
| 3. Quarterly e-newsletter     | 7. Translations as needed                 |
| 4. Presentation/tour database |   |

Note: All deliverables are the property of DUSPA

## EXHIBIT A-2

### 2009 COST ESTIMATE

TASKS		2009			TOTAL HOURS	DISCOUNTED HOURLY RATE	TOTAL
		Oct-09	Nov-09	Dec-09			
Task 1: Public Affairs	CRL	12	12	12	36	\$ 200.00	\$ 7,200.00
	ZA	2	2	2	6	\$ 150.00	\$ 900.00
	TBD	0	4	4	8	\$ 150.00	\$ 1,200.00
Task 2: Public Outreach	CRL	23	18	18	59	\$ 200.00	\$ 11,800.00
	ZA	8	8	8	24	\$ 150.00	\$ 3,600.00
	TBD	0	6	6	12	\$ 150.00	\$ 1,800.00
	CC	10	4	4	18	\$ 90.00	\$ 1,620.00
Total Hours		55	54	54	163		
Sub-Total Monthly		\$ 9,550	\$ 9,510	\$ 9,510		Sub-Total	\$ 28,120.00
Administrative Overhead (copies, mileage, etc.)		\$ 150	\$ 150	\$ 150		Admin	\$ 450.00
Total Monthly		\$ 9,700	\$ 9,660	\$ 9,660		Total	\$ 28,570.00
Allocation by Consultant:	CRL	\$ 7,150	\$ 6,150	\$ 6,150			\$ 19,450.00
	ZA	\$ 1,500	\$ 1,500	\$ 1,500			\$ 4,500.00
	TBD	\$ -	\$ 1,500	\$ 1,500			\$ 3,000.00
	CC	\$ 900	\$ 360	\$ 360			\$ 1,620.00
		\$ 9,550	\$ 9,510	\$ 9,510			\$ 28,570.00
	CRL	\$ 19,450	68.1%				
	SBE/DBE	\$ 9,120	31.9%				
	Task 1	\$ 9,300	32.6%				
	Task 2	\$ 18,820	65.9%				
	Admin	\$ 450	1.6%				
CONSULTANT KEY:	CRL	CRL Associates, Inc.					
	ZA*	Zann and Associates					
	TBD*	TBD – Spanish-language Outreach Specialist					
	CC*	Carnes Creative					

\* SBE/DBE certified

## 2010 COST ESTIMATE

TASKS		2010												TOTAL HOURS	DISCOUNTED HOURLY RATE	TOTAL		
		Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10					
Task 1: Public Affairs	CRL	12	12	12	12	12	12	12	12	12	12	12	12	144	\$	200.00	\$	28,800.00
	ZA	2	2	2	2	2	2	2	2	2	2	2	2	24	\$	150.00	\$	3,600.00
	TBD	4	4	4	4	4	4	4	4	4	4	4	4	48	\$	150.00	\$	7,200.00
Task 2: Public Outreach	CRL	18	18	18	18	18	18	18	18	18	18	18	18	216	\$	200.00	\$	43,200.00
	ZA	8	8	8	8	8	8	8	8	8	8	8	8	96	\$	150.00	\$	14,400.00
	TBD	6	6	6	6	6	6	6	6	6	6	6	6	72	\$	150.00	\$	10,800.00
	CC	4	4	4	4	4	4	4	4	4	4	4	4	48	\$	90.00	\$	4,320.00
Total Hours		54	54	54	54	54	54	54	54	54	54	54	54	648				
Sub-Total Monthly		\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	Sub-Total			\$ 112,320.00	
Administrative (copies, mileage, etc.)		\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	\$ 150	Admin			\$ 1,800.00	
Total Monthly		\$ 9,510	\$ 9,510	\$ 9,510	\$ 9,510	\$ 9,510	\$ 9,510	\$ 9,510	\$ 9,510	\$ 9,510	\$ 9,510	\$ 9,510	\$ 9,510	Total			\$ 114,120.00	
Allocation by Consultant:	CRL	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000				\$ 72,000.00	
	ZA	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500				\$ 18,000.00	
	TBD	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500				\$ 18,000.00	
	CC	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360				\$ 4,320.00	
		\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360	\$ 9,360				\$ 112,320.00	
	CRL	\$ 73,800.00	64.7%															
	SBE/DBE	\$ 40,320.00	35.3%															
	Task 1	\$ 39,600.00	34.7%															
	Task 2	\$ 72,720.00	63.7%															
	Admin	\$ 1,800.00	1.6%															
CONSULTANT KEY:	CRL	CRL Associates, Inc.																
	ZA*	Zann and Associates																
	TBD*	TBD – Spanish-language Outreach Specialist																
	CC*	Carnes Creative																
		* SBE/DBE certified																

## **EXHIBIT B**

### **CERTIFICATIONS AND FEDERAL REQUIREMENTS**

#### **Lobbying**

The Consultant certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

#### **Access to Records and Reports**

The following access to records requirements apply to this Agreement:

1. The Consultant agrees to provide the Owner, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Owner is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Consultant agrees to provide the Owner, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Owner enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Consultant agrees to provide the Owner, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Owner which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Consultant shall make available records related to the contract to the Owner, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until the Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

**Federal Changes**

Consultant shall at all times comply with all applicable federal regulations, policies, procedures and directives as they may be amended or promulgated from time to time during the term of this contract as they are communicated to Consultant by any of the Partner Agencies or Owner.

**No Government Obligation to Third Parties**

(1) The Owner and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements and Related Acts**

(1) The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

(2) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

(3) The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that

the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Government-Wide Debarment and Suspension (Nonprocurement)**

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant verifies that none of the Consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Consultant shall comply with 49 CFR 29, Subpart C and agrees to include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, the Consultant certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Owner. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Consultant agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Agreement or any contract that may arise therein. The Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Disadvantaged Business Enterprise (DBE)**

1. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. DUSPA's overall aspirational Project goal for DBE participation is [12%]. A separate contract goal of 30% has been established for this Agreement.

2. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as DUSPA deems appropriate. Each subcontract the Consultant signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

3. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49

CFR 26.53. Award of this contract is conditioned on submission of the following prior to award and pursuant to **Attachment A** hereof:

- a. The names and addresses of DBE firms that will participate in this contract;
- b. A description of the work each DBE will perform;
- c. The dollar amount of the participation of each DBE firm participating;
- d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- e. Written confirmation from the DBE that it is participating in the contract as provided in the prime Consultant's commitment; and
- f. If the contract goal is not met, evidence of good faith efforts to do so.

**Incorporation of Federal Transit Administration (FTA) Terms**

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.



**Attachment A**

Names and addresses of DBE firms participating in this contract:

Zann and Associates

\_\_\_\_\_  
\_\_\_\_\_

Carnes Creative

\_\_\_\_\_  
\_\_\_\_\_

TBD

\_\_\_\_\_  
\_\_\_\_\_

A description of the work each DBE will perform:

Zann and Associates

\_\_\_\_\_  
\_\_\_\_\_

Carnes Creative

\_\_\_\_\_  
\_\_\_\_\_

TBD

\_\_\_\_\_  
\_\_\_\_\_

The dollar amount of the participation of each DBE firm participating:

Zann and Associates – [\$\_\_\_\_\_]

Carnes Creative – [\$\_\_\_\_\_]

TBD – [\$\_\_\_\_\_]

By signing below, **CRL Associates, Inc.** hereby asserts its commitment to use disadvantaged business enterprise contract participant[s] that will meet the contract goals as set forth in the Public Involvement Consultant Agreement between Denver Union Station Project Authority and CRL Associates, Inc. If such contract goal is not met, CRL will provide evidence of good faith efforts to do so.

**CRL ASSOCIATES, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By signing below, Zann and Associates and Carnes Creative hereby assert their confirmation that they are disadvantaged business enterprises that will serve as contract participants to meet the contract goals as set forth in the Public Involvement Consultant Agreement between Denver Union Station Project Authority and CRL Associates, Inc.

**ZANN AND ASSOCIATES**

**CARNES CREATIVE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**TBD**

By: \_\_\_\_\_

Title: \_\_\_\_\_