



## Department of Parks, Recreation & Golf

6060 Parkway Avenue  
Commerce City, Colorado 80022  
303-289-8166

# OUTDOOR LEISURE POOL AT PIONEER PARK

Project: PRG-04-2014  
Contract

Book Number: \_\_\_\_\_

August 2013

# CITY OF COMMERCE CITY

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# CITY OF COMMERCE CITY

## ADVERTISEMENT FOR BIDS

### ANNOUNCEMENT FOR RECEIVING OF BIDS

Deadline for submitting Bids to the City:

**September 8, 2014  
1:00 p.m. (local time)**

**Plans by City:** Construction of a new Outdoor Leisure Pool and Bath House with features including but not limited to a kiddie pool, slide tower and lazy river (the "Project"). The location of the Project is the City's Pioneer Park, 5950 Holly Street, Commerce City, Colorado (the "Site").

The Site includes approximately two (2) acres for the Project, located on the east half of the Site bordered by Monaco Street. The Site has a total of 600 existing parking spaces that will be utilized for additional amenities. Magnitude of the Project is estimated between \$5.75 million and \$6.25 million.

Bids must be submitted at the City's Recreation Center located at 6060 Parkway Drive, Commerce City, CO 80022. A five percent (5%) Bid Bond for base bid in the form of a cashier's check or certified check is required at the time of Bid. One hundred percent (100%) Performance Bond and Payment Bond (2 separate bonds must be submitted) are required prior to Contract Execution.

Plans and specifications are available at <http://www.rockymountainbidsystem.com/>. The Document Number is "ITB-KO-CCRC-PP"

**Instruction to Bidders:** The Project is funded through Commerce City's \$137 million capital improvement program as the result of a November, 2013, voter-approved sales and use tax increase that provides a dedicated revenue stream for new parks, recreation and road projects into the future.

Please see attached documents and include all required information along with the attached documents with your bid proposal:

- Construction Plans
- Contract Bid Documents

#### **Scope of Work Includes the Following:**

##### Base Bid

1. General Conditions/Mobilization
2. Site Demolition
3. Pedestrian Lighting Relocation
4. Clearing and Grubbing
5. Erosion Control
6. Site Grading
7. Concrete Paving
8. Concrete Curbs
9. Pool Building
10. Irrigation System

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11. Native Seeding
12. Sodding
13. Pool Deck
14. Pool including slide structure and water slides
15. Shade Structures
16. Site Lighting
17. Utilities

### Bid Alternates:

- A. Alternate No. 01 - Kids Pool:
- B. Alternate No. 02 - North Toilets:
- C. Alternate No. 03 - Gutter Pools
- D. Alternate No. 04 - Speed Slide:
- E. Alternate No. 05 - Two Umbrellas
- F. Alternate No. 06 - Shade Structures and associated deck

**Note:** A non-mandatory pre-bid conference and Site visit will be held at the Commerce City Recreation Center, 6060 Parkway Dr., Commerce City, CO 80022, Conference Room A-B at 1:00 p.m. M.S.T. on August 18, 2014. Questions pertaining to the drawings or specifications shall be submitted by email to the Owner's Representatives listed below and copied to the Owner, also below. The deadline for submitting questions in writing is 1:00 p.m. M.S.T. on August 29, 2014.

Owners Representative; Wember  
Paul Wember - [pwember@wemberinc.com](mailto:pwember@wemberinc.com)  
Conor Bancroft - [cbancroft@wemberinc.com](mailto:cbancroft@wemberinc.com)

Owner Project Manager; Commerce City Department of Parks, Recreation & Golf  
Karen O'Donnell, Project Manager – [kodonnell@c3gov.com](mailto:kodonnell@c3gov.com)

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### INVITATION TO BID

The City of Commerce City, Colorado (the “City”), is seeking sealed bids for **Outdoor Leisure Pool at Pioneer Park** (the “Project”). Bids shall be submitted to Karen O'Donnell, Project Manager, Department of Parks, Recreation & Golf, City of Commerce City, at the Commerce City Recreation Center, 6060 Parkway Dr., Commerce City, CO 80022. Bids will be accepted until 1:00 p.m., M.S.T time, on September 8, 2014. There will be no formal bid opening. Bids will be evaluated by the City and bidders will be notified of results. Any Bid received after the time and date specified above shall not be considered.

A non-mandatory pre-bid conference will be held for this project on August 18, 2014, at 1:00 p.m. M.S.T. at the Commerce City Recreation Center, 6060 Parkway Dr., Commerce City, CO 80022. Plans and specifications are available at <http://www.rockymountainbidsystem.com/>. The Document Number is ITB-KO-CCRC-PP.

**Instruction to Bidders:** The Project is funded through Commerce City's \$137 million capital improvement program as the result of a November, 2013, voter-approved sales and use tax increase that provides a dedicated revenue stream for new parks, recreation and road projects into the future.

Please see attached documents and include all required information along with the attached documents with your bid proposal:

- Construction Plans
- Contract Bid Documents

### REQUIREMENTS FOR SUBMISSION OF BIDS

Bids shall be submitted in a sealed envelope bearing on the outside the name of the company submitting the Bid (the “Bidder”), the Bidder's office address and mailing address, the name of the Project and the date and time of opening of Bids. If forwarded by mail, a sealed envelope containing the Bid must be enclosed in another envelope properly addressed and postage or dispatching fee(s) prepaid.

All Bids must be submitted on the required Bid Form(s) supplied with the Contract Documents. All blank spaces for Bid prices must be filled in, in ink or typewritten, and the Bid Form(s) must be fully completed and executed. Only one (1) copy of the Bid Form(s) is required.

All Bids shall be valid from the date of Bid opening to the date of an executed Contract Agreement, or to a date not to exceed ninety (90) days after the date of the Bid opening, whichever is earlier.

If erasures or other changes appear in a Bid, each such erasure or change must be initialed by the person signing the Bid. Alternative Bids will not be considered. Telephone, email or faxed Bids will not be considered. Modification by telephone, email or fax of Bids already submitted will not be considered.

The Contract Documents contain the provisions for the construction of the Project. Information obtained from an officer, agent or employee of the City or any other person shall neither affect the risks or obligations assumed by the Bidder nor relieve it from fulfilling any of the Conditions of the Contract. A conditional or qualified Bid may be cause for rejection.

Each Bidder shall carefully examine the Site and fully acquaint itself with all conditions and matters that could in any way impact the Project or cost thereof. The Bidder shall become thoroughly familiar with

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the Specifications, Drawings and other Contract Documents before submitting a Bid. The failure or omission of any Bidder to do any of the foregoing acts shall in no way relieve it from any obligation in respect to its Bid or any provisions of the Contract Documents. Bidders must satisfy themselves as to the accuracy of the estimated quantities in the bid Schedule by examination of the Site and a review of the Drawings and Specifications, including any Addenda. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of work or of the nature of the Project to be done. Bidders shall be responsible for the accuracy of Bids.

The Bidder shall supply the names and addresses of major material suppliers and Subcontractors on the form provided.

Each Bid must be accompanied by Bid Security, i.e., Certified Check, Cashier's Check or Bid Bond, in the amount of not less than five percent (5%) of the amount of the Bid. The Bid Security shall be forfeited to the City as Liquidated Damages, not as a penalty, should the successful Bidder fail to enter into a contract in accordance with the Bid as specified in the Contract Agreement.

An Attorney-in-fact who signs Bid Bonds or Payment Bonds and Performance Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

### **BID OPENING**

No responsibility shall be attached to any officer, clerk or other employee of the City for the premature opening of, or the failure to open, a Bid not properly addressed and/or identified.

There will be no formal public bid opening. Bids will be evaluated by the City and bidders will be notified of results.

In the event of an emergency situation (i.e., large snowstorm, tornado, etc.) that causes the City Manager to close City offices, the Project Manager is authorized to re-schedule the date for receiving Bids. All Bidders will be allowed to re-submit their Bids prior to the new date and time specified.

### **AWARD OF CONTRACT; NOTICE TO PROCEED**

The City may make such investigations as deemed necessary to determine the ability of Bidders to construct the Project, and Bidders shall furnish to the City all such information and data for this purpose as the City may request.

The City reserves the right to reject any and all Bids and to waive any and all irregularities and informalities if the City determines in its sole discretion that such rejection or waiver is in the best interests of the City. The City's decision to reject any or all Bids or to waive irregularities or informalities is final and without recourse by the Bidder.

Once Bids have been compared, the City shall return the Bid Bonds of all except the three Bids determined to represent the best value to the City. When the Contract is executed, the City shall return the Bid Bonds of the two remaining unsuccessful Bidders.

Award of a contract shall be made via the Notice of Award to a single Bidder (the "Successful Bidder").

The Successful Bidder must furnish the Payment Bonds and the Performance Bonds on the forms provided, or on other substantially similar forms satisfactory to the City, attached to the appropriate sheet of the Contract Documents Performance and Payment Bonds, in the amount required, from a surety

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company holding a license from the State of Colorado to act as surety or from other Surety or sureties acceptable to the City. The Bid Bond of the Successful Bidder shall be retained until the Payment and Performance Bonds have been executed and approved, after which the Bid Bond will be returned.

The Successful Bidder shall furnish the Project Manager with a proposed schedule of construction within seven (7) calendar days after receipt of Notice of Award. The Notice to Proceed shall not be issued until the proposed schedule of construction is received and approved by the Project Manager.

The City will issue a Notice to Proceed within seven (7) calendar days of the execution of the Contract by the City. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time to issue the Notice to Proceed may be extended in writing by the City, but in no event shall the time to issue the Notice to Proceed be extended beyond an additional fifteen (15) days. If the Notice to Proceed has not been issued within the extended period, the Successful Bidder may terminate the Contract without further liability on the part of either party.

### MISCELLANEOUS

A party who has quoted prices to a Bidder is not thereby disqualified from quoting prices to others submitting bids or from submitting a Bid directly for the Project.

The Successful Bidder shall at all times maintain a maximum efficient working force to ensure completion of the Project within the time for completion set forth elsewhere in these Documents.

The City hereby notifies all Bidders that it does not discriminate in consideration of an Award of this Contract on the basis of race, creed, color, religion, gender or sex, age, handicap, veteran status, national origin or ancestry.

All applicable laws, ordinances, permits, rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract and throughout the duration of the Contract, and by submitting a Bid, Bidders agree to abide by all such laws, ordinances, permits, rules and regulations.

The contact person with regard to this Project is Karen O'Donnell, Recreation Division Manager, City of Commerce City.

BY AND FOR  
THE CITY OF COMMERCE CITY, COLORADO

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By: Karen O'Donnell, Project Manager  
For: Carolyn J. Keith, CPRP, Director  
Department of Parks, Recreation & Golf

City of Commerce City  
6060 Parkway Avenue  
Commerce City, Colorado 80022  
Telephone: (303) 289-8166.

**ATTENTION: Due to past irregularities found in bid proposals, bids not completed precisely in accordance with the instructions found herein are subject to immediate rejection at the sole discretion of the City.**

# CITY OF COMMERCE CITY

## Vicinity Map





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### **INSTRUCTIONS TO BIDDERS**

1. **CONTRACT DOCUMENTS.** When the words “Contract” or “Contract Documents” appear herein, they shall mean all of the following parts, together with all authorized modifications thereto:

- ADVERTISEMENT FOR BIDS
- INVITATION TO BID
- VICINITY MAP
- INSTRUCTIONS TO BIDDERS
- BID BOND
- CONTRACT PROPOSAL WITH BID FORM(S)
- LISTING OF NAMES AND ADDRESSES OF MAJOR MATERIAL SUPPLIERS AND SUBCONTRACTORS
- NOTICE OF AWARD
- INSURANCE AND WORKERS’ COMPENSATION CERTIFICATES
- PAYMENT AND PERFORMANCE BONDS
- CONTRACT AGREEMENT
- NOTICE TO PROCEED
- ACCEPTANCE OF NOTICE
- GENERAL CONDITIONS
- ADDENDA, IF ANY
- SCHEDULE(S) OF CONSTRUCTION
- DRAWINGS
- SPECIAL CONDITIONS (TECHNICAL SPECIFICATIONS)
- CHANGE ORDERS, IF ANY
- PLANS/SPECIFICATIONS

No less than all of the parts of the Contract Documents shall constitute the formal Contract.

2. **DEFINITIONS.** Technical and construction terms used in the Contract Documents shall have the meanings indicated, applicable to both the singular and plural thereof.

a) **ADDENDA:** Written or graphic instructions issued prior to the execution of the Agreement which modify or interpret the Contract Documents, by additions, deletions, clarification or corrections.

b) **AWARD:** The formal action of the City in accepting a Bid.

c) **BID:** The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

d) **BIDDER:** Any qualified person or entity submitting a proposal for the performance of the Work covered by the Plans/Specifications, Drawings, General and Special Conditions and Addenda (if any).

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- e) **BONDS**: Bid, Payment, and Performance, and other instruments of security, furnished by Contractor and its Surety in accordance with the Contract Documents.
- f) **CHANGE ORDER**: A written order to Contractor authorizing an addition, deletion or revision in the Work within the general scope of Contract Documents and/or authorizing an adjustment in the Contract Price or Contract time.
- g) **CITY**: The City of Commerce City, a Colorado home rule municipality located in the County of Adams whose principal business address is 7887 East 60<sup>th</sup> Avenue, Commerce City, CO 80022
- h) **CONTRACT DOCUMENTS**: All of the integral documents of the Contract, including all documents listed in Section 1 above and any other documents mutually and expressly agreed upon as Contract Documents by the Parties.
- i) **CONTRACT PRICE**: The total moneys payable to Contractor under the terms and conditions of the Contract Documents.
- j) **CONTRACT TIME**: The number of calendar days stated in the Contract Documents for the completion of the Work.
- k) **CONTRACTOR**: The individual or legal entity entering into the Contract with the City for the performance of Work covered by the Contract Documents.
- l) **DRAWINGS**: The part of the Contract Documents that show the characteristics and scope of the Work to be performed and that have been prepared or approved by the Project Manager. (Also called Plans).
- m) **PROJECT MANAGER**: The City's Recreation Manager or other authorized representative(s) acting on behalf of the City.
- n) **FIELD ORDER**: A written order issued by the Project Manager to Contractor during construction that creates a change in the Work not involving an adjustment in the Contract Time or Price.
- o) **GENERAL CONDITIONS**: A part of the Contract Documents consisting of terms and conditions governing the technical nature of materials, equipment, construction systems, standards and workmanship, the administration of the Contract and certain rights and responsibilities of the Parties.
- p) **NOTICE OF AWARD**: The written notice to the Successful Bidder of the City's acceptance of the Bid.
- q) **NOTICE TO PROCEED**: Written communication issued by the City to Contractor authorizing it to commence the Work.
- r) **OWNER'S REPRESENTATIVE**: The authorized representative of the City who is assigned to the Project.
- s) **PARTIES**: The parties to the Contract; specifically, the City and Contractor.

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t) PROJECT: The undertaking to be performed as provided in the Contract Documents.

u) SHOP DRAWINGS: All drawings, diagrams, illustrations, brochures, schedules and other data that are prepared by Contractor or a Subcontractor, Manufacturer, Supplier or Distributor that illustrate how specific portions of the Work shall be fabricated or installed.

v) SPECIAL CONDITIONS: Specific conditions, requirements, additions and/or revisions to the standard Drawings/Plans and/or specifications applicable to the Work to cover conditions or requirements peculiar to the Project.

w) SUBCONTRACTOR: An individual or legal entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

x) SUBSTANTIAL COMPLETION: When the construction of the Project or a specified part thereof is sufficiently completed in accordance with the Contract Documents, as certified by the Project Manager, so that the Project or a specified part thereof can be used for the purposes intended.

y) SURETY: The entity that has guaranteed a bond or other security on behalf of Contractor for the performance of the Work hereunder.

z) WORDS OF IMPORTANCE: When the Plans/Specifications state the work “as directed,” “as required” or words of like meaning are used, it shall be understood that the direction, requirement or permission of the Project Manager is intended. Similarly, the words “approved,” “acceptable” and “satisfactory” shall refer to approval by the Project Manager.

aa) WORK: All labor necessary to produce the construction required by the Contract Documents and all materials and equipment incorporated or to be incorporated in the Project.

bb) WRITTEN NOTICE: Any notice relative to any part of this Agreement, in writing, and considered delivered and the service thereof completed when posted by certified or registered mail to the party at its last given address or delivered in person to said party or its authorized representative on the Work.

3. **BIDS.** In filling out the Bid Form, Bidders shall be governed by the following:

a) Bids shall be made upon the Bid Form provided in the Contract Documents. Unit prices and extensions shall be entered in the spaces provided on the Bid Form on the line pertaining to each Bid item. Total Bid amount shall be both written in words and expressed in numbers. If a discrepancy exists between the amount stated in words and the amount stated in figures, the amount stated in words shall govern. In case of an error in the extension of the price, the unit Bid Price shall govern. Prices and name of signatory shall be printed in ink or by typewriter; all signature(s) shall be in ink.

b) The unit price items in the Contract Bid Form are intended to cover all items of work to be done and materials to be furnished to fully complete the Work in accordance with the Contract Documents. The cost of appurtenant items of work, materials and equipment not listed separately, not shown on the Drawings or not specified but necessary to complete the Work in accordance with the Contract Documents shall be considered as included in the unit price Bid.

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c) Bids shall be made on each separate item of work shown in the Bid, with reasonable relation to the probable cost of doing the work included in such item, and the right is reserved to reject any Bid in case an item or items thereof are obviously unbalanced or appear to be so unbalanced as to affect adversely an interest of the City.

d) The quantities listed in the Bid are approximate and are given only for use in comparing Bids and to indicate approximately the total amount of the Contract. The City does not expressly or by implication represent that the actual amounts of Work will correspond therewith, but does call particular attention to the uncertainty in the quantities of the Work involved, which cannot be predicted in advance. The Work under certain items may be materially greater or less than those given in the Bid as may be necessary in the judgment of the Project Manager to complete the Work contemplated in the Contract.

e) Each Bidder is required to state in its Bid its full name, legal office address and mailing address (if different) and shall state the names of all persons interested with it in the Bid, and if no other person be so interested, the Bidder shall distinctly state the fact. It is further understood that the Bid is made without connection with any other individual or legal entity submitting a Bid for the Work and that the Bid is in all respects fair and made without collusion or fraud.

f) A Bid may be disregarded by the City if any modification of the Contract Documents, as prepared by the City, is made by the Bidder or if the Bidder fails to fully complete and fill in all blanks necessary to complete the Contract Documents.

g) A Bid Bond or certified or cashier's check, as described in the Invitation for Bid must accompany each Bid.

h) Each Bidder must examine and will be held to have examined the site of the Work and satisfied itself as to the conditions under which it will be obligated to perform the Work. The Project Manager's estimate of quantities given in any preliminary statement of work is to be considered as approximate only, and Contractor shall not, at any time, make claim to any additional payment(s) or consideration on account of any misunderstanding regarding the nature or amount of the work to be performed.

i) If the City is not satisfied as to the ability of the Bidder to perform the Work set forth herein, or the suitability of its equipment, the City may at its sole discretion require a statement of competency, which shall include:

- (1) Work performed by Contractor in the last five years;
- (2) Plant and equipment, described in detail, available and that it now proposes to use on this Work;
- (3) Recent financial statement relative to resources, including cash and bank credits available;
- (4) Name of surety company that has indicated its willingness to bond the Bidder;
- (5) Statement of material on hand and available for this Work; and

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(6) Qualifications of the supervisors who will supervise the various trades at the job site.

(7) The Bidder otherwise qualified may be required, either before or after the Bid Opening, to demonstrate availability of equipment and organization, not otherwise committed, to perform the Work within the time limit specified in the Contract Documents. Bidders shall be required to fully inform the Project Manager of their availability for prompt performance of this Contract.

j) Bids must be sealed and addressed to and deposited with the City at the location stated in the Invitation to Bid before the hour set for opening of Bids in the Invitation to Bid. The envelope enclosing the Bid must show the official Project Name and City Project Number of the Work, name of company of the Bidder and date and time for Bid Opening.

4. **WITHDRAWAL OF BID.** A Bidder may withdraw its Proposal, at any time prior to the expiration of the period during which bids may be submitted, by notarized written request signed in the same manner and by the same person who signed the Proposal.

5. **INTERPRETATION OF PLANS/DRAWINGS, SPECIFICATIONS AND DOCUMENTS.** Should a Bidder find discrepancies in, or omissions from, the Drawings/Plans, Specifications or any other Contract Document, or should the Bidder be in doubt as to the meaning thereof, it shall notify the Project Manager in writing at least seven (7) calendar days prior to the time set for the opening of Bids. Phone calls to the City are not acceptable. If the point in question is not clear, the City will issue a written Addendum. Each Bidder requesting an interpretation will be responsible for the delivery of its request to the Project Manager. The City will not be bound by or be responsible for any explanations or interpretations of the Documents other than those given in writing as set forth in this Section.

6. **SUBSTITUTION FOR PATENTED AND SPECIFIED ARTICLES.** The materials, products, equipment or processes described in the Contract Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. The materials, products, equipment or process specified shall be considered as the basis for the bid. Substitutions shall not be considered unless a written request has been submitted by the Bidder and has been received and approved by the Project Manager at least ten (10) calendar days prior to the date for receipt of Bids. Each request shall include the name of the item for which it is to be substituted and a complete description of the proposed substitute. The description shall include trade names, drawings, specifications, cuts, performance and test data and any other information necessary for evaluation. A statement setting forth any changes in other materials, equipment or Work that incorporation of the substitute would require shall be included. The burden of proof concerning the merit of the proposed substitute is upon the Bidder. The Project Manager's decision of approval or disapproval of a proposed substitute shall be final. If the Project Manager approves any substitutions, the approval shall be authorized by an Addendum. Bidders shall not rely upon approvals made in any other manner.

7. **AWARD OR REJECTION OF BIDS.**

a) Each Bid will be compared among all Bids that are received to determine which Bid will provide the best value to the City.

b) The Contract will be awarded to the Bidder complying with these instructions and with the Invitation to Bid whose Bid represents the best value to the City. The City shall be

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the sole judge of the Bidder's qualifications and whether the Bid represents the best value to the City. The City reserves the right to accept or reject any or all Bids in whole or in part.

8. **STATE AND FEDERAL LAWS.** Bidders shall familiarize themselves with the laws of the State of Colorado, the Federal Government and the City and all regulations made pursuant to any of them pertaining to the proposed Work and shall comply with the same.

9. **CONSIDERATION OF CONTRACT PROPOSAL.** The Bid Securities, other than that of the successful Bidder, will be returned once the Contract Agreement and the Performance and Payment Bonds have been executed and approved. The successful Bidder shall execute the Contract Agreement and furnish the Performance and Payment Bonds and insurance required within seven (7) calendar days from the date of the Notice of Award or such other date mutually agreed in writing by the Parties. The successful Bidder's failure to comply with this provision shall constitute just cause for annulling the Award, and in such event, the avails of the Bid Security of the Bidder shall become the property of the City. The Award may then be made to another Bidder, the City may call for other Bids or the City may elect to forego the Project.

10. **LIMIT OF ONE BID.** No individual or entity shall make or file more than one Bid for the same Work unless alternate bids are required.

11. **SUBLETTING.** No part of the Contract shall be sublet or assigned without the written approval of the Project Manager. The Bidder shall not propose to use subcontractors for more than 50% of the Work without prior written approval of the Project Manager.

12. **SCHEDULE OF CONSTRUCTION AND ESTIMATED PAYMENTS.** The Bidder to whom the Contract is awarded must furnish to the City, within seven (7) calendar days after receipt of the Notice of Award, a proposed schedule of construction. The Notice to Proceed will not be issued until the proposed schedule of construction is received and approved by the Project Manager.

13. **SALES AND USE TAX.** Unless specifically exempt, all construction within the City is taxable, including construction performed on behalf of an exempt institution or governmental, religious, charitable, private or any other type of owner, including the City.

a) The Successful Bidder shall be subject to the tax on all purchases, fabrication, manufacture or other production of tangible personal property used, stored or consumed on the Project. This includes construction of parking lots, roads, bridges, highways and buildings and remodeling of both public and private facilities.

b) Specific Industry Standard for Construction and Contractors (Regulation 20-S.I.15) can be provided upon request by contacting the City's Finance Department, Sales Tax Division, at 303-289-3628.

c) Prior to or on the date the Contractor locates equipment within the City to fulfill the contract, the Contractor shall file a declaration describing each anticipated piece of equipment the purchase price of which was two thousand five hundred dollars (\$2,500.00) or greater, stating the dates on which the Contractor anticipates the equipment to be located within and removed from the boundaries of the City and stating the actual or anticipated purchase price of each such anticipated piece of equipment along with any other information deemed necessary by the City. When such declared equipment is located within the City for a period of thirty (30) days or less, the Contractor may include sales and use tax calculated on one-twelfth (1/12) of the purchase price of such equipment in the contract amount, in compliance with Section 20-5-V of the

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Commerce City Sales and Use Tax Code. If the Contractor fails to declare the equipment to the City prior to or on the date the Contractor locates the equipment within the City, none of the sales and use tax due on the equipment shall be allowed as a contract expense.



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**BID BOND**

Know all men by these presents, that \_\_\_\_\_ as principal, and, \_\_\_\_\_ as Surety, are held and firmly bound unto the City of Commerce City, Colorado (hereinafter called "City"), in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, severally, firmly by these present.

The condition of this obligation is such that whereas, the principal has submitted the accompanying Bid dated \_\_\_\_\_ for \_\_\_\_\_

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

set out in the accompanying Bid; and

Whereas, the City has required as a condition for receiving said Bid that the principal deposit with the City either a certified or cashier's check equal to five percent (5%) of the amount of the Bid, or in lieu thereof, furnish a Bid Bond for said amount. Conditioned that in the event of failure to execute the proposed Contract for such construction and the required Payment and Performance Bonds, if the Contract be awarded it, that said sum be paid immediately to the City as Liquidated Damages, not as a penalty, for the principal's failure to perform.

Now therefore, if the principal shall, within the period specified in the Instructions to Bidders,

- A) On the attached prescribed forms presented to it for signature, enter into a written contract with the City in accordance with its bid as accepted, and give Payment and Performance Bonds with good and sufficient surety, or securities, as may be required upon the forms prescribed by the City, for the faithful performance and the proper fulfillment of the Contract, or
- B) Withdraw said bid within the time specified in the Instructions to Bidders or have such bid rejected by the City, or
- C) Pay to the City the sum of this Bond as Liquidated Damages, and not as a penalty,

then this obligation shall be void and of no effect, otherwise to remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and this Bond shall be in no way impaired or affected by any extension of time within which the City may accept the Bid, and Surety does hereby waive notice of any such extension.

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Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

Attest:

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

\_\_\_\_\_  
Surety: \_\_\_\_\_

Address:

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

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

Attorney-in-fact

Local Agent \_\_\_\_\_

Address:

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

**CITY OF COMMERCE CITY**

**CONTRACT PROPOSAL WITH BID FORM(S)**

Project No. PRG-04-2014

Date: \_\_\_\_\_

City Manager  
City of Commerce City, Colorado  
7887 East 60th Avenue  
Commerce City, Colorado 80022

The undersigned Bidder, having examined the site of the proposed Work and having full knowledge of the conditions under which the Work must be performed, hereby proposes to enter into and perform the Contract Agreement that is set forth in the Contract Documents, of which this Bid forms a part, and perform the construction therein described on the terms and conditions therein set forth, furnish all required labor and materials and pay all incidental costs, all in strict conformity with the Contract Documents, for the following unit prices listed in Bid Form(s) as payment in full.

The following surety company has indicated its willingness to bond our firm for the Work herein described.

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Attorney-In-Fact, Surety

If awarded the Contract, the undersigned hereby agrees to execute said Contract Agreement and furnish the required Performance Bond and Payment Bond and procure the required insurance within seven (7) calendar days from the date of the Notice of Award of the Contract or such other date as otherwise mutually agreed upon in writing by the Parties.

The undersigned further proposes that should this Proposal be accepted, it will commence work within seven (7) calendar days from the date of the Notice to Proceed and complete all the Work covered by the Contract Documents within 200 calendar days from the date of the Notice to Proceed.

The undersigned further agrees, if awarded the Contract for the Work included in this Bid Proposal, to begin and to complete and deliver the Work contemplated in accordance with the conditions set forth in the Contract Documents. The undersigned has checked carefully the figures inserted hereinafter and understands that the City will not be responsible for any error or omissions on the part of the undersigned in preparing this bid.

The undersigned hereby certifies that this Bid is genuine, and not sham or collusive or made in the interest or behalf of any person not herein named and that the undersigned has not, directly or indirectly, induced or solicited any other Bidder to put a sham bid, or induced any other person, firm or corporation to refrain from bidding, and that the undersigned has not in any manner sought by collusion to secure for itself any advantages over any other Bidder.

The only persons interested as principals in this Bid other than the one whose signature is affixed hereto are to be listed as follows (if there are none, state such fact): \_\_\_\_\_.

Name: \_\_\_\_\_ Address \_\_\_\_\_

Name: \_\_\_\_\_ Address \_\_\_\_\_

This Bid shall be valid from the date of opening to the date of an executed Contract Agreement, or to a date not to exceed ninety (90) calendar days after the date of bid opening, whichever is earlier.

## CITY OF COMMERCE CITY

The undersigned Bidder submits herewith Bid Security in the form of a Bid Bond, Certified or Cashier's Check in favor of the City of Commerce City, Colorado, in the amount of not less than five percent (5%) of the total Bid in dollars, and agrees and consents that the Bid Security shall be forfeited to the City of Commerce City, Colorado, as Liquidated Damages, not a penalty, if the required Payment and Performance Bonds are not executed within seven (7) calendar days from the Notice of Award, or date otherwise mutually agreed upon in writing by the Parties.

In submitting this Bid, it is understood that the right is reserved by the City to reject any or all bids and to waive irregularities and informalities in bidding.

Respectfully submitted,

\_\_\_\_\_  
Contractor (Bidder) (SEAL)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

a/an corporation/limited liability company/partnership/individual organized under the laws of the State of \_\_\_\_\_ composed of the following members, managing members, officers, partners or owners:

\_\_\_\_\_  
President/CEO/COO of Corporation or  
Manager/Managing Member of LLC or  
Managing Partner of Partnership

\_\_\_\_\_  
Vice President/CFO/Managing Member/Member/Partner

\_\_\_\_\_  
Secretary/Managing Member/Member/Partner

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Treasurer/Managing Member/Member/Partner

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip Code

( ) \_\_\_\_\_  
Telephone Number

**Note:** Contractor, also complete Pages \_\_\_\_\_, which follow this page.

# CITY OF COMMERCE CITY

## BID FORM

<b>BASE BID - Item</b>	<b>Price</b>
Earthwork (includes topsoil, stripping and stockpile, export, import haul, over-excavation and place for all earthwork.)	
Pool House (Construction and all MEP to service the Pool House Functions)	
Pool Deck, Pools, Slides, Shade Structures and pool infrastructure	
<b>TOTAL BID PRICE</b>	

<b>BID ALTERNATES - Item</b>	<b>Price</b>
A. Alternate No. 01 - Kids Pool:	
B. Alternate No. 02 - North Toilets:	
C. Alternate No. 03 - Gutter Pools	
D. Alternate No. 04 - Speed Slide:	
E. Alternate No. 05 - Two Umbrellas	
F. Alternate No. 06 - Shade Structures and associated deck	
<b>TOTAL BID ALTERNATES PRICE</b>	

<b>Schedule</b>	<b>Duration in Weeks</b>
Base Bid	
Base bid and Alternate A	

Changes in the Work will be net cost plus a percentage fee in accordance with General Conditions, our percentage for increases and credits will be:

1. \_\_\_\_\_ percent overhead and profit on the net cost of our own Work;
2. \_\_\_\_\_ percent on the cost of work done by any Subcontractor.
3. \_\_\_\_\_ percent bonding
4. \_\_\_\_\_ percent labor burden
5. \_\_\_\_\_ percent labor burden

**CITY OF COMMERCE CITY**

**UNIT PRICES**

<b><u>ITEM</u></b>	<b><u>Unit</u></b>	<b><u>Unit Price</u></b>
Seeding	SY	_____
Removal of Soil offsite (note owner has nearby site for spoils)	CY	_____
Concrete Pool Deck	SF	_____

**GENERAL INFORMATION**

Check One:    ☐ Corporation ☐ Partnership ☐ Joint Venture  
                  ☐ Individual ☐ Other \_\_\_\_\_

1.    How many years has the Bidder been in business as a General Contractor under its present name? \_\_\_\_\_

2.    How many years has the Bidder been in business under its present business name? \_\_\_\_\_

3.    If a Corporation, answer the following:

        Date of Incorporation: \_\_\_\_\_  
        State of Incorporation: \_\_\_\_\_  
        President: \_\_\_\_\_  
        Vice-President(s): \_\_\_\_\_  
        Secretary: \_\_\_\_\_  
        Treasurer: \_\_\_\_\_

4.    If a Partnership, answer the following:

        Date of Organization: \_\_\_\_\_  
        Type of Partnership: \_\_\_\_\_  
                (General/Limited/Assoc)

        Name and Address \_\_\_\_\_  
        Of all Partners \_\_\_\_\_  
  \_\_\_\_\_  
  \_\_\_\_\_  
  \_\_\_\_\_  
  \_\_\_\_\_

6.    Is the Bidder authorized to transact business in Colorado? \_\_\_\_\_  
      (If the answer is “no”, skip items 7, 8, & 9.)

7.    Is the Bidder’s principal place of business in Colorado? \_\_\_\_\_  
      (If the answer is “no”, you must answer question 8; if the answer is “yes”, disregard question 8.)

8.    a.    Does the Bidder maintain a place of business in Colorado?  
              (If the answer is “yes”, you must answer question 8b)

        b.    Has the Bidder paid Colorado Unemployment Compensation Taxes in at least 75% of the 8  
              quarters immediately prior to the date of bid? \_\_\_\_\_

## CITY OF COMMERCE CITY

9. List states and categories in which the Bidder is legally qualified to do business.

State: _____	Category: _____
State: _____	Category: _____
State: _____	Category: _____
State: _____	Category: _____
State: _____	Category: _____
State: _____	Category: _____

### GENERAL PERFORMANCE HISTORY

1. Has the Bidder ever failed to complete any work awarded to it? If so, indicate when, where, and why.

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2. Has the Bidder ever defaulted on a contract? If so, when, where, and why?

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3. Has any Officer or Partner of the Bidder ever been an Officer or Partner of another organization that failed to complete a construction contract? If so, state circumstances:

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4. Has the Bidder ever failed to be awarded a contract on which it was low bidder? If so, when, where, and why?

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**CITY OF COMMERCE CITY**

15. Are any lawsuits pending against the Bidder or the officers of the Bidder at this time? \_\_\_\_\_  
If “yes”, detail:

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16. Has the Bidder ever been suspended, debarred, or determined to be ineligible from entering into contracts with any Federal, State, or local governmental entity: \_\_\_\_\_  
If “yes”, detail:

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17. Provide the Bidder’s OSHA reportable accident rate and current worker’s compensation insurance multiplier for the last 3 years. Provide the OSHA reportable accident rate on projects managed by the proposed superintendent or project manager over the 3-year period (depending on who is assigned site safety responsibility in the Contractor organization).

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# CITY OF COMMERCE CITY

## 2.1 QUALIFICATIONS FORM

1. List the years of construction experience of the principal individuals in the Bidder's organization as well as the key individual that will be assigned to this project including the percentage of his/her time to be assigned to this Project. List recent projects similar for the Bidder's proposed Project manager and superintendent. Key Project staff will be contractually tied to the Project and the Bidder shall attain written approval from the Project Manager prior to changing its proposed Project manager and/or superintendent.

Name	Position	Years of Experienced	Percent of Time
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. What percent of construction work does the Bidder self-perform with its own forces?

Trades	%	Trades	%
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. List comparable construction projects the Bidder has under contract on this date:

- A. Project Name: \_\_\_\_\_  
 Owner: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Architect/Engineer: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Contract Amount: \_\_\_\_\_ Contract Date: \_\_\_\_\_  
 Percent Complete: \_\_\_\_\_ Scheduled Completion: \_\_\_\_\_  
 Project Manager: \_\_\_\_\_ Project Superintendent: \_\_\_\_\_
- B. Project Name: \_\_\_\_\_  
 Owner: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Architect/Engineer: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Contract Amount: \_\_\_\_\_ Contract Date: \_\_\_\_\_  
 Percent Complete: \_\_\_\_\_ Scheduled Completion: \_\_\_\_\_  
 Project Manager: \_\_\_\_\_ Project Superintendent: \_\_\_\_\_
- C. Project Name: \_\_\_\_\_  
 Owner: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Architect/Engineer: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Contract Amount: \_\_\_\_\_ Contract Date: \_\_\_\_\_  
 Percent Complete: \_\_\_\_\_ Scheduled Completion: \_\_\_\_\_  
 Project Manager: \_\_\_\_\_ Project Superintendent: \_\_\_\_\_

**CITY OF COMMERCE CITY**

I acknowledge that this Bid includes addendum #\_\_\_\_, through #\_\_\_\_. If none, so state.

Signed: \_\_\_\_\_

Name Printed: \_\_\_\_\_

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

Company:\_\_\_\_\_

Address:\_\_\_\_\_

E-mail:\_\_\_\_\_

Phone:\_\_\_\_\_

**CITY OF COMMERCE CITY**

**LISTING OF NAMES AND ADDRESSES OF MAJOR MATERIAL SUPPLIERS AND  
SUBCONTRACTORS**

**PROPOSED SUBCONTRACTORS/SUPPLIERS**

The following information is submitted for each subcontractor that will be used in the work if the Bidder is awarded the Contract. Additional numbered pages shall be attached to this page as required. Each page shall be signed. All work to be subcontracted over **\$10,000** shall be listed.

<u>Amount of Subcontract</u>	<u>Name and Address of Subcontractor</u>	<u>Portion of Work</u>
_____	_____	_____
	_____	_____
	_____	_____
	_____	_____

This is to certify that the names of the foregoing mentioned Subcontractors or material suppliers are submitted with full knowledge and consent of the respective parties

Bidders: \_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_  
(Signature and Title)

Date: \_\_\_\_\_

**CITY OF COMMERCE CITY**

**NOTICE OF AWARD**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Name: OUTDOOR LEISURE POOL AT PIONEER PARK

Project Number: PRG-04-2014

The City of Commerce City (the "City") has considered the Bid submitted by you for the above-described Work in response to the City's Advertisement for Bids. You are hereby notified that your Bid has been accepted in the amount of \_\_\_\_\_.  
(\$\_\_\_\_\_). [This Notice of Award includes addenda #\_\_\_\_\_, #\_\_\_\_\_.]

You are required by the Instructions to Bidders to execute the Contract Agreement and furnish the required Contractor's Payment and Performance Bonds (the "Bonds") and Certificates of Insurance within seven (7) calendar days from the date of this Notice of Award to you, or such other date mutually agreed upon in writing by you and the City.

Within seven (7) calendar days after receipt of this Notice of Award, you shall furnish to the Project Manager a proposed schedule of construction. A Notice to Proceed will not be issued until the proposed schedule of construction is received and approved by the Project Manager.

If you fail to execute the Contract Agreement and furnish the Bonds as required above, the City will be entitled to consider all your rights arising out of the City's acceptance of your bid as being abandoned and as a forfeiture of your Bid Security. The City will be entitled to such other rights as may be available at law or equity.

You must return an acknowledged copy of this Notice of Award to the City.

The bid Security submitted with your Proposal will be returned upon your execution of the Contract Agreement and the furnishing of the Bonds. In the event you fail to execute the Contract Agreement or furnish the Bonds within the time limit specified, the Bid Security shall be retained by the City as Liquidated Damages, not a penalty, for failure to accept the Award and execute the necessary Documents for the formation of the Contract.

The City of Commerce City certifies that an adequate appropriation of funds is available to equal the contract amount, as bid.

Please be advised that the executed Contract Agreement is not binding until signed by the City of Commerce City. You should not make any expenditures in anticipation of this Work except for items

**CITY OF COMMERCE CITY**

pertaining to the signing of the Contract Agreement and appurtenant forms until you receive the Notice to Proceed.

Dated this \_\_\_\_\_, day of \_\_\_\_\_ 20\_\_.

CITY OF COMMERCE CITY, COLORADO

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

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice of Award is hereby acknowledged by \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

**CITY OF COMMERCE CITY**

**INSURANCE**  
**AND**  
**WORKERS' COMPENSATION**  
**CERTIFICATES**

Copies or originals are acceptable

(Attach certificates for insurance coverage as required by the General Conditions.)

**CITY OF COMMERCE CITY**

**PAYMENT BOND**

\_\_\_\_\_, as principal, hereinafter called Contractor, and, \_\_\_\_\_ as Surety, with general offices in \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of Colorado, are hereby bound unto the City of Commerce City, Colorado, as obligee, hereinafter called the City, in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) with interest thereon at the rate of eight percent per annum on all payments becoming due in accordance with the below designated Contract from the time such payment shall become due until such payment shall be made, in United States currency, for the payment of which sum Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

WHEREAS, Contractor has entered into a written Contract with the City dated \_\_\_\_\_, 20\_\_\_\_, for \_\_\_\_\_ in accordance with Contract Documents contained in the Contract, a copy of which Contract is attached hereto and made a part hereof and is hereinafter referred to as the Contract;

NOW, THEREFORE, the conditions of this Payment Bond are such that, if Contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing it or its Subcontractors with labor or materials, rental machinery, tools or equipment used or performed in the prosecution of the work provided for in the Contract and shall indemnify and save harmless the City to the extent of any payments in connection with the performance of such Contracts that the City may be required to make under law, then this obligation shall be null and void; otherwise the obligation shall remain in full force and effect.

In addition to the other conditions hereof, this Bond shall include all provisions set forth in Section 38-26-105, C.R.S.

THE UNDERSIGNED SURETY for value received hereby agrees that no extension of time, change in, addition to, or other modification of the terms of the Contract or work to be performed thereunder or of the Specifications of the Contract Documents shall in any way affect its obligation on this Bond, and the Surety does hereby waive notice of any such extension of time, change, addition, or modifications.

Any action against the Surety on this Bond shall be brought no later than two years from the date fixed for final settlement of the Contract.

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

\_\_\_\_\_  
(Contractor)

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

\_\_\_\_\_  
(President)

\_\_\_\_\_  
(Surety Company)

By: \_\_\_\_\_  
(Attorney-in-Fact)

## CITY OF COMMERCE CITY

### PERFORMANCE BOND

\_\_\_\_\_, as principal, hereinafter called Contractor, and \_\_\_\_\_, as Surety, with general offices in \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of Colorado, are hereby bound unto the City of Commerce City, Colorado, as obligee, hereinafter called the City, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), in United States currency, for the payment of which sum Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

WHEREAS, Contractor has entered into a written contract with the City dated \_\_\_\_\_, 20\_\_\_\_, for \_\_\_\_\_ in accordance with Contract Documents comprising the Contract, a copy of which Contract is attached hereto and made a part hereof and is hereinafter referred to as the Contract;

NOW, THEREFORE, the conditions of this Performance Bond are such that, if Contractor shall satisfactorily perform the Contract, the obligations hereunder shall be null and void; otherwise, the obligations shall remain in full force and effect. Whenever Contractor shall be declared by the City to be in default under the Contract, the City having performed the City's obligations thereunder, the Surety may promptly remedy the default or shall promptly

Complete the Contract in accordance with its terms and conditions, or

Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the City elects, upon determination by the City and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the City, and make available as Work progresses (even though there should be a default or a succession of defaults under the contracts of completion arranged under the paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the City to Contractor under the Contract and any amendments thereto, less the amount properly paid by the City to Contractor.

In addition, if Contractor or its Subcontractor shall fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by such Contractor or its Subcontractor in performance of the Contract or shall fail to duly pay any person who supplies rental machinery tools or equipment all amounts due as the result of the use of such machinery tools or equipment in the prosecution of the work, then the Surety shall pay the same in an amount not exceeding the sum specified in the Bond together with interest at a rate of eight percent per annum.

In addition to the other conditions hereof, this Bond shall include all provisions set forth in Section 38-26-106, C.R.S.

THE UNDERSIGNED SURETY for value received hereby agrees that no extension of time or change in, addition to or other modification of the terms of the Contract or work to be performed thereunder or of the Drawings, Plans/Specifications or any other Contract Document shall in any way



**CITY OF COMMERCE CITY**

affect its obligation on this bond, and the Surety does hereby waive notice of any such extension of time, change, addition, or modifications.

Any action against the Surety on this Bond shall be brought no later than two years from the date fixed for final settlement of the Contract.

EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest:

\_\_\_\_\_

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_  
President/CEO/Managing Member/Managing Partner

\_\_\_\_\_  
(Surety Company)

By: \_\_\_\_\_  
(Attorney-in-Fact)

## CITY OF COMMERCE CITY

### CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT (the "Contract") is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60<sup>th</sup> Avenue, Commerce City, CO 80022 (the "City"), and White Construction Group, an organization existing under the laws of the State of Colorado \_\_\_\_ whose principal business address is 18 South Wilcox St. Suite 100, Castle Rock CO 80104, herein after called the ("Contractor").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. PROJECT. Contractor shall commence and complete all items listed in the Notice of Award, Project Number PR2012-001(the "Project"), in accordance with the Contract Documents.
2. PROSECUTION OF THE WORK.
  - a. Commencement of Work. Contractor understands and agrees that the Work shall be commenced within seven (7) calendar days from and including the date of the Notice to Proceed, and Contractor shall have all the work called for under this Contract fully completed within \_\_\_\_\_ (\_\_\_\_\_) calendar days from the date of the Notice to Proceed.
  - b. Performance. Contractor shall, at its own expense, perform all work and furnish all labor, materials, tools, supplies, machinery, utilities and other equipment that may be necessary for the completion of the Project, in a professional and workmanlike manner, as outlined in the Plans/Drawings, Specifications, General and Special Conditions and this Contract.
  - c. Changed Conditions. Contractor specifically waives any claim for additional compensation for any changed condition, unless such changed condition is caused in whole or in part by acts or omissions within the control of the City or persons acting on behalf thereof, arising out of any of the following:
    - i. A physical condition of the site of an unusual nature;
    - ii. Differing materially from those ordinarily encountered and generally recognized as inherent in work of the character and at the location provided for in the Contract; or
    - iii. Any force majeure.
  - d. Rate of Progress. Contractor acknowledges and understands that it is an essential term of this Contract that Contractor maintain a rate of progress in the Work that will result in completion of the Project in accordance with the Contract requirements, and to that end, Contractor agrees to proceed with all due diligence to complete the Work in a timely manner in accordance with this Contract.
3. COMPENSATION. Contractor agrees to perform the Work described in the Contract Documents and to comply with the terms therein for the sum of \_\_\_\_\_ Dollars (\$X,XXX,XXX.XX). The City shall make payment(s) to Contractor in the manner and at such times as set forth in the General Conditions such amounts as are required by the Contract Documents.

## CITY OF COMMERCE CITY

4. CONTRACT DOCUMENTS. The term “Contract Documents” includes the following, each and all of which are a part thereof and have the same force and effect as if spread at length herein:
- a. Advertisement for Bids
  - b. Invitation to bid
  - c. Vicinity Map
  - d. Instructions to Bidders
  - e. Bid Bond
  - f. Contract Proposal with Bid Form(s)
  - g. Listing of Names and Addresses of Major Material Suppliers and Subcontractors
  - h. Notice of Award
  - i. Insurance and Workers’ Compensation Certificates
  - j. Performance and Payment Bonds
  - k. Contract Agreement
  - l. Notice to Proceed
  - m. Acceptance of Notice
  - n. General Conditions
  - o. Addenda, if any (issued before a contract is signed)
  - p. Schedules of Construction
  - q. Drawings
  - r. Modification or change orders, if any (issued after Contract is signed)
  - s. Special Conditions (Technical Specifications)
  - t. Plans
5. CONFLICTING PROVISIONS – PRIORITY. In the event of any conflict among the various Contract Documents, the priority of such documents, and therefore the order in which the provisions of such documents shall govern, shall be as follows:
- a. Change Orders, if any
  - b. Addenda, if any
  - c. Special Conditions
  - d. General Conditions
  - e. Specifications
  - f. Plans/Drawings
  - g. Contract Agreement
6. APPROPRIATION. The City confirms that the amount of money appropriated for this Contract is equal to or in excess of the contracted amount, and it is agreed that no change order, or other form of order or directive by the City requiring additional compensable work to be performed or that causes the aggregate amount payable under this Contract to exceed the amount appropriated for the original Contract, shall be issued unless Contractor is given written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless payment for such work is otherwise provided for by the City.
7. INSURANCE AND INDEMNIFICATION. Insurance and indemnification shall be as set forth in the General Conditions.

## CITY OF COMMERCE CITY

### 8. MISCELLANEOUS PROVISIONS.

- a. Original Contracts. This Contract may be executed in two or more copies, each of which shall be deemed an original. The City shall retain one copy, and one copy shall be delivered to Contractor. Additional copies, if any, shall be provided to any additional parties
- b. Governing Law and Venue; Recovery of Costs. This Contract shall be governed by the laws of the State of Colorado, and venue shall be in the County of Adams, State of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Contract, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable court costs and attorney fees.
- c. Governmental Immunity. 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, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*
- d. No Assignment. Contractor shall not assign this Contract without the City's prior written consent.
- e. No Partnership or Agency. Notwithstanding any language in this Contract or any representation or warranty to the contrary, neither the City nor Contractor shall be deemed or constitute a partner, joint venture or agent of the other. Any actions taken by the parties pursuant to this Contract shall be deemed actions as an independent contractor of the other.
- f. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the City and Contractor shall be deemed to be only an incidental beneficiary under this Contract.
- g. No Waivers.
  - i. The waiver of any term, provision or requirement of this Contract shall not be construed or deemed as a waiver of any other term, provision or requirement of this Contract.
  - ii. The one-time waiver of any continuing obligation under this Contract shall not be construed or deemed as a continuing waiver of such obligation.
  - iii. 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 thereof.
- h. Severability. In the event a court of competent jurisdiction holds any provision of this Contract invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Contract.

**CITY OF COMMERCE CITY**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**CITY OF COMMERCE CITY**

\_\_\_\_\_  
Brian K. McBroom, City Manager

ATTEST:

\_\_\_\_\_  
Laura J. Bauer, CMC, City Clerk

Approved as to form:

\_\_\_\_\_  
Gregory D. Graham, Assistant City Attorney

Recommended for approval:

\_\_\_\_\_  
Carolyn J. Keith, CPRP, Director  
Department of Parks, Recreation & Golf

\_\_\_\_\_  
\_\_\_\_\_, Project Manager

**[CONTRACTOR]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_.

Witness my hand and official seal.

My Commission Expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

CITY OF COMMERCE CITY

NOTICE TO PROCEED

CITY OF COMMERCE CITY, COLORADO

Date: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby notified to proceed on this date for the construction of the **Outdoor Leisure Pool at Pioneer Park, Project Number prg-04-2014**, for the City of Commerce City, Colorado, as set forth in detail in the Contract Documents, including Plans and Specifications.

Further, you are to complete the work within 180 calendar days after the date first appearing above, or no later than \_\_\_\_\_, 20\_\_.

CITY OF COMMERCE CITY

\_\_\_\_\_, Project Manager

For: Carolyn J. Keith, CPRP, Director  
Department of Parks, Recreation & Golf

We have determined the following permit(s) is/are required:

1. City of Commerce City General Contractor's License

If you will not complete your work involving these permits and/or licenses within the allotted time specified thereon, you are required to communicate with the Project Manager to determine extension requirements. If you encounter other permits and/or licenses being required, please communicate immediately with the Project Manager.

**CITY OF COMMERCE CITY**

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice to Proceed is hereby acknowledged by \_\_\_\_\_  
\_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

Telephone: \_\_\_\_\_

Company or Corporation Name:

\_\_\_\_\_

## CITY OF COMMERCE CITY

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# **CITY OF COMMERCE CITY**

## **GENERAL CONDITIONS**

### **1. INTENT OF PLANS/DRAWINGS AND SPECIFICATIONS**

a. The Contract Documents are intended to be complementary, and work called for on any drawing and not mentioned in the Plans or Specifications, or work described in the Plans and Specifications and not shown on any drawing, is to be regarded as included under this Contract the same as if it were set forth in the Plans and Specifications and exhibited on the Drawings.

b. The prices shown in the Contract Documents shall include the cost of all labor and materials, testing, surveying, equipment and services, and all other expenses necessary for the complete execution of the Work contracted for so that it will function as a working unit of the Plans of which it will be a part.

c. In interpreting the Contract Documents, words describing materials, or work having a well known technical or trade meaning, unless otherwise specifically defined, shall be construed in accordance with such well known meaning recognized by engineers, architects, surveyors and the trades. In resolving inconsistencies among two (2) or more of the Contract Documents, precedence shall be given in the following respective order:

- (1) Contract Agreement;
- (2) Plans/Specifications and Drawings;
- (3) Special Conditions (Technical Specifications);
- (4) General Conditions.

### **2. WORKMANSHIP AND MATERIALS**

Unless otherwise provided for in the Plans and Specifications, all workmanship, equipment, materials and articles incorporated in the work performed under this Contract are to be the best of their respective kinds, new and undamaged. Contractor shall also furnish information on capacities, efficiencies, sizes, etc., and other information as required by the Project Manager. Samples shall be submitted for approval when requested. Machinery, equipment, materials and articles installed or used without the Project Manager's approval shall be at the risk of subsequent rejection.

### **3. MATERIALS AND EQUIPMENT FURNISHED BY CONTRACTOR**

Contractor shall furnish all materials and equipment required in the Contract Plans/Drawings and Specifications.

### **4. AUTHORITY OF THE PROJECT MANAGER**

a. The Project Manager is designated by the City to exercise all authority on its behalf under this Contract and to see that this Contract is performed according to its terms. Work under this Contract may be suspended by the Project Manager for substantial cause, and any such suspension by the Project Manager shall be without cost or claim against the City unless such suspension by the Project Manager is caused in whole or in part by acts or omissions within the control of the City or persons acting on behalf of the City.

## **CITY OF COMMERCE CITY**

b. The Project Manager may assume or resume exclusive control of the place of performance of this Contract whenever such place of performance is located within or upon property belonging to the City. The Project Manager shall furnish all explanations, directions and inspections to satisfy himself/herself that Contractor is performing the work contemplated and provided for under this Contract; provided, however, that no inspection, explanation or direction by the Project Manager shall be deemed authority for Contractor to deviate from the requirement that the Work be performed in accord with the Contract Documents.

c. Any person employed on the Work who fails, refuses or neglects to obey the instructions of the Project Manager, or appears to the Project Manager to be incompetent, or disorderly, shall, upon the order of the Project Manager, be at once forbidden by Contractor to work on any portion of the Project covered by these Contract Documents.

### **5. CONTRACTOR'S REPRESENTATIVE**

Contractor shall have a Superintendent or other representative present who shall be Contractor's representative and have immediate charge of the Work and all of the authority and duties of Contractor hereunder. The Superintendent or representative shall have Contractor's written authority to act on Contractor's behalf.

### **6. CHARACTER OF WORKERS**

a. None but foremen and workers skilled in the work assigned to them shall be employed on work requiring special qualifications, and Contractor shall discharge from its service, when required by the Project Manager, any disorderly, dangerous, insubordinate or incompetent person employed on the Work.

b. While engaged in the performance of the Work, Contractor shall maintain employment practices consistent with the Colorado Antidiscrimination Act, C.R.S. § 24-34-301 through § 24-34-804, as amended.

### **7. SUPPLEMENTAL DRAWINGS**

a. When required by the Specifications or Plans/Drawings, and for all undetailed material to be fabricated, Contractor shall make detailed shop drawings to amplify the Drawings referred to in the Contract before proceeding with the Work. Such drawings shall be submitted to the Architect per the contract documents.

b. The approval by the Project Manager of Contractor's drawings is an approval relating only to their general conformity with the Plans/Drawings and Specifications and does not guarantee detail dimensions and quantities.

### **8. RIGHTS-OF-WAY**

a. Except as pertains to utility structures that are governed by these General Conditions at the sections titled "Rights and Responsibilities of Contractor: Rejected Materials and Work and Protection of Existing Facilities" below, the City will provide right of access to all places necessary for the performance of the Work. The City will make best efforts to provide right of access in a timely manner. However, the City shall not be liable to Contractor for any delay in providing right of access outside the City's control. Nothing contained herein shall be interpreted as giving Contractor exclusive occupancy of the area provided by the City.

## **CITY OF COMMERCE CITY**

b. The City and other contractors of the City may for any purpose, but without unreasonably interfering with prosecution of the Work, enter upon or occupy portions of the land furnished by the City. When the area provided for performance of one contract is required for the execution of another contract, the privilege of access, or any other reasonable privilege, shall be afforded by Contractor at all times necessary. Joint occupancy or use of the territory shall not be made the basis of any claim for delay or damages unless such delay or damage is caused in whole or in part by acts or omissions within the control of the City or persons acting on behalf thereof.

### **9. OTHER CONTRACTS**

The City reserves the right to allow others to contract in connection with the Work. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of materials and the execution of work and shall coordinate Contractor's work with the other contractors.

### **10. WORK CHANGES**

a. Upon prior approval of the Project Manager given by written Change Order, the City may, at any time during the progress of the Work, make alterations to the Work without consent of the Surety. The Work, as changed, shall be performed as if originally specified and shall in no way invalidate the Contract. Any difference in the Cost shall be added to or deducted from the amount of the Contract, as the case may be, as specified in the Change Order. Adjustments in the amounts to be paid to Contractor on account of changed work shall be determined by one of the following methods in the order listed, the earlier listed being used unless impractical:

- (1) Unit prices submitted in Contractor's Contract Proposal.
- (2) Unit prices agreed upon.
- (3) Acceptable lump sum.

b. When, in the judgment of the Project Manager, it is impractical due to the nature of the changed work to fix the amount to be paid for it by any of the above methods, the amount payable shall be adjusted on the basis of the bid form submitted.

c. "Actual cost" shall include all expenditures for materials furnished and used by Contractor, labor costs, including the foreman in direct charge of the specific operation, and rental for power tools or specific equipment that may be required, based on the rental rates for equipment as shown on the "Equipment Rental Rates Schedule" of the Associated General Contractors of America. The "actual cost" is to be agreed upon or specified by the Project Manager in writing before the Work is begun, but will not include any allowance for office expenses, general superintendent, other general overhead charges, depreciation or maintenance charges.

d. No claim for additional payment shall be valid unless authorized in writing.

### **11. RIGHT TO ANNUL CONTRACT**

The City shall, at any time, have the right to annul the Contract upon giving written notice to Contractor. In such event Contractor shall be entitled to the full amount of the approved estimate for the work done by it under the Contract up to the time of such annulment, including the retained percentage. Contractor shall be reimbursed by the City for such expenditures as, in the judgment of the Project Manager, are not otherwise compensated for.

## **CITY OF COMMERCE CITY**

### **12. PERFORMANCE OF THE WORK – DELAY OR VIOLATION**

If the performance of the Work is unnecessarily or unreasonably delayed by Contractor, or if any of the provisions of this Contract are being violated by Contractor or its Subcontractors, the Project Manager may serve written notice upon Contractor and the Surety of such delay or violation. If, within five (5) calendar days after serving notice, such delay or violation is not corrected, the Project Manager shall immediately serve notice thereof, and the Surety shall have the right to take over and perform the Work. If the Surety does not commence performance of the Work within ten (10) calendar days from the date of said notice, the City may take over the Work and, without prejudice, prosecute the Work to completion, and Contractor and its Surety shall be liable to the City for any cost incurred by the City over and above the Contract Cost and for any Liquidated Damages to which the City is entitled pursuant to the Contract.

### **13. RIGHT TO ACCEPT PORTION OF WORK**

The City reserves the right to accept and make use of any completed section of the Work without invalidating the Contract or obligating the City to accept the remainder of the Work or any portion thereof. Payment shall be made for the portion of Work accepted, and such payment shall be determined by the Project Manager from the unit price(s) found on the Bid at quantities not exceeding those found on the Bid.

### **14. COMPLETENESS OF WORK**

Before final acceptance, all parts of the Work shall be examined and tested, if necessary, and each part shall be in good condition and working order or shall be placed in good condition and working order at Contractor's expense. All tests of completed Work and equipment required under this Contract shall be made under the direction of the Project Manager, at the expense of the City, who shall repair at its own expense any damage resulting therefrom.

### **15. DUTIES OF PROJECT MANAGER**

a. Determinations for Payment. The Project Manager shall make all determinations of amounts and quantities of the Work. Contractor shall make available for inspection any records kept by it.

b. Quality Assurance. The City will provide its own inspection for the Project.

c. Access to Work. The Project Manager and his/her representatives shall at all times have access to the Work wherever it is in preparation or progress and Contractor shall provide proper facilities for such access and inspection. The uncovering, testing and/or removing of portions of finished Work, if such is necessary, shall be paid for by Contractor if the Work has not been reported to the Project Manager and accepted by him.

d. City Inspection of Work.

(1) Inspector(s) shall be appointed by the Project Manager to inspect materials used and Work done. Inspections may extend to all or any part of the Work and to the preparation or manufacture of the materials to be used. The inspectors will not be authorized to alter the provisions of the Plans and Specifications or delay the fulfillment of the Contract by failure to inspect materials and Work with reasonable promptness. An inspector cannot issue instructions contrary to the Plans/Drawings and Specifications or act as foreman for Contractor. The

## CITY OF COMMERCE CITY

inspector shall have authority to reject defective materials and to suspend any Work that is being done improperly subject to the final decision of the Project Manager.

(2) If sub-standard material not conforming to the requirements of the Drawings and Plans/Specifications has been delivered to the Project or has been incorporated in the Work, or if work has been performed of inferior quality, such material or work shall be considered defective and shall be removed and replaced as directed by the Project Manager at the expense of Contractor. All materials shall be subject to examination and test by the Project Manager at any time during manufacture.

(3) The City reserves the right to reject defective materials during manufacture or before they have been incorporated into the Work. If Contractor fails to replace rejected materials, the City may replace them or correct defective work and charge the cost thereof to Contractor or may terminate the right of Contractor to proceed. Any failure to earlier detect defective materials or workmanship shall not impair the City's right to a completed Project in accordance with the requirements of the Contract.

(4) Inspection of the Work shall in no way be construed to relieve Contractor of full compliance with the Contract Documents.

e. Suspension of Work - Weather Conditions. The Project Manager may order Contractor to suspend work that may be damaged or endangered by adverse weather. When adverse weather is unusual and extensive, an extension of time may be granted to Contractor by the Project Manager.

f. Weather Days. Any claim for an extension to the Contract Time caused by inclement weather that would preclude performance of any task(s) shall be discussed with the Project Manager before any claim for time extension will be granted by the City. Further, any verbally discussed time delay days shall be confirmed in writing by Contractor the following work day and signed by the Project Manager. Contractor's grant of extension to the Contract Time under this section does not entitle Contractor to additional monetary compensation. Contractor's should anticipated and consider typical weather patterns for the region while building the schedule.

### **16. RIGHTS AND RESPONSIBILITIES OF CONTRACTOR**

#### **a. General.**

(1) Contractor hereby agrees that it is satisfied as to the nature and location of the Work, the character, quality and quantity of the materials to be encountered, including sub-surface conditions, the equipment and facilities needed to prosecute the Work, the local conditions and all other matters that can affect the Work.

(2) If Contractor, in the course of completing the Work, finds a discrepancy between the Drawings and the physical conditions, or finds any errors or omissions on the Drawings, it shall be Contractor's duty to immediately inform the Project Manager in writing, and the Project Manager shall promptly investigate and make any determination required by the circumstances. Any Work done after such discovery, until authorized, will be done at Contractor's risk. In all cases, the Project Manager shall decide the intent of the Plans/Drawings and Specifications and his decision shall be final and binding.

b. Staging and Storage Sites. Contractor may, with approval of the Project Manager, obtain sites of his/her choosing for equipment storage and/or materials stockpiling. A list of such sites shall be

## CITY OF COMMERCE CITY

submitted to the Project Manager for approval at least five (5) days prior to intended use. For each site submitted for the Project Manager's approval, the proposed truck route for ingress and egress to the site shall be shown. Contractor shall not occupy storage sites without prior written approval by the Project Manager. For all sites approved and used, Contractor shall be responsible for the following:

- (1) Obtaining prior written permission of the owner. A copy of this permission shall be provided to the City.
- (2) Keeping stockpiles and equipment confined within the approved area and in accordance with the City's Erosion Control requirements.
- (3) Providing security for materials and equipment at the site.
- (4) Providing for public safety at the site.
- (5) Keeping access roads clean and in good condition and in accordance to the City's Erosion Control requirements.
- (6) At Contractor's sole cost expense, restoring the site to its original or better condition, as determined by the Project Manager.

c. Traffic Control.

- (1) The flow of traffic on streets shall be reasonably maintained at all times during construction. The roadway shall be properly maintained and Contractor shall coordinate its operations with the City Transportation Engineer as to approval of detours (if any), parking areas for workers' private vehicles, access to private property, etc.
- (2) Contractor shall provide a safe roadway and shall erect and maintain warning signs, barricades and sufficient safeguards around all excavations, embankments and obstructions. Contractor shall provide suitable warning lights or flares and shall keep them lit at night and other times when visibility is limited. Contractor shall provide such flagmen and watchmen as may be determined by the Project Manager for the protection of the public.
- (3) Except for those cases where construction is actually taking place on a sidewalk, construction signs shall not be placed on sidewalks.
- (4) Contractor shall, not less than ten (10) working days prior to the start of the Work, submit to the City Transportation Engineer for approval a Traffic Control Plan, which shall include the layout of all signing, barricades, lighting and flagging and whether Uniformed Traffic Control ("UTC") may be required for any part of the Project. In the event UTC may be required, Contractor shall coordinate with the Commerce City Police Department ("CCPD") and use only CCPD for its UTC. The Traffic Control Plan shall conform to the Manual on Uniform Traffic Control Devices. The approved Traffic Control Plan shall be implemented prior to the start of any construction.
- (5) On Colorado State Highways, no work in the roadway shall begin before 8:30 A.M. and all equipment shall be off from the roadway before 3:30 P.M. each day.
- (6) Construction signs shall be turned away from traffic when not in use. When not in use during evening hours, construction signs shall be moved at least eight (8) feet from the nearest edge of the traveled way.

## CITY OF COMMERCE CITY

(7) Any violation of the approved Traffic Control Plan shall result in a written notice to stop work imposed on Contractor. Work shall not resume until Contractor assures the Project Manager, in writing, that there will not be a recurrence of the violation. If additional violations take place, the Project Manager will notify Contractor in writing that a price reduction charge will be imposed for each additional incident. The incident price reduction charge will be deducted from any money due to Contractor. The price reduction will not be considered a penalty, but will be a price reduction for failure to perform traffic control in compliance with the Contract.

(a) An "incident" is defined as any violation lasting up to thirty (30) minutes. A price reduction will be assessed for each successive or cumulative 30-minute period in violation of the traffic control plan, as determined by the Project Manager.

(b) The price reduction for each incident will increase at a progressive rate starting at One Hundred Fifty Dollars (\$150) for the second incident and increasing to One Thousand Two Hundred Dollars (\$1,200) for the fifth and subsequent incidents in accordance with the following Price Reduction Schedule.

PRICE REDUCTION SCHEDULE	
<u>INCIDENT</u>	<u>INCIDENT RATE</u>
1 <sup>st</sup>	Notice to Stop Work
2 <sup>nd</sup>	\$150
3 <sup>rd</sup>	\$300
4 <sup>th</sup>	\$600
5 <sup>th</sup>	\$1,200
subsequent	\$1,200

d. Surveying and Similar Tasks. No lines, grade staking or other surveying task will be furnished by the Project Manager. Contractor shall provide for its own surveying tasks. All bench marks and monuments shall be preserved by Contractor. In case Contractor or its employees destroy bench marks or monuments, a professional land surveyor, licensed in the state of Colorado, will replace them at Contractor's expense. Contractor shall satisfy itself as to the accuracy of all lines and grades prior to proceeding to use such lines and grades. In the event Contractor proceeds with the Work without having lines and grades set, Contractor shall in no way be relieved of strict compliance with the Contract requirements in respect hereto.

e. Quality Control. Contractor is ultimately responsible for quality of work performed. All work must be constructed within stipulated tolerances and care must be taken during installation and removal operations. Contractor is responsible for checking forms, verifying grades and testing sub-grade and materials.

f. Scheduling and Completion of the Work. Contractor shall begin and complete the Work within the times stated in the Contract Documents. The capacity of Contractor's and forces employed shall be such as to ensure the completion of the Work within the specified period of time.

g. Coordination. Contractor's superintendent or foreman for the Project must have a radio cell phone or pager to enable the City Inspector to contact that person when necessary.

h. Rejected Materials and Work. Whenever materials or work are rejected, Contractor shall promptly remove such materials and construction from the job site and replace all rejected portions to the satisfaction of the Project Manager. In the event Contractor fails to remove rejected items from the job



## CITY OF COMMERCE CITY

site within a reasonable length of time, the Project Manager may arrange for such removal at Contractor's sole expense. Contractor shall be responsible for the cost of any retesting required as a result of a failing test.

### i. Utilities.

(1) Contractor shall at all times coordinate its work with the South Adams County Water and Sanitation District and with any other utility affected by the Work. In this regard, Contractor shall be responsible for coordinating removal or relocation of any utility structure(s) that interfere with the Work. In the event it becomes necessary to close existing portions of any water or sewer system due to construction, at least twenty-four (24) hours (one full weekday) prior notification must be given to the South Adams County Water and Sanitation District. Contractor shall be responsible for insuring continuity of all utilities affected by the Work. All electrical power and water required during construction shall be provided by and at the expense of Contractor. Contractor shall call the Utility Notification Center of Colorado forty-eight (48) hours prior to the start of any excavating.

(2) Protection of Existing Facilities. Contractor shall notify all affected utility companies and all other interested parties prior to commencement of work in order to insure that there will not be undue interruptions of services during progress of the Work. Existing power lines, telephone lines, trees, shrubbery, fences, water mains, gas mains, sewers, cables, conduits, ditches, embankments and other structures in the vicinity of the Work not authorized to be removed shall be supported and protected from injury by Contractor during the construction and until completion of the work affecting them. Contractor shall be liable for all damages done to such existing facilities and structures, as herein provided, and shall save the City harmless from any liability or expense for injuries, damages or repairs to such facilities.

(3) Responsibility to Repair. Contractor shall notify the Project Manager and/or owner of the existing utilities, whether above or below ground prior to proceeding with excavation wherever such operations are within fifteen (15) feet of any existing utility. Should any such utility be damaged in the operations, Contractor shall immediately notify owner of such utility, and unless authorized in writing by the owner of the Utility, Contractor shall not attempt to make repairs. Duplicate copies of any written authorization given to Contractor to make repairs shall be filed with the Project Manager and shall be so worded as to save harmless the City of any responsibility whatsoever related to the sufficiency of the repairs.

(4) Contractor shall conduct its operations in such a manner as to minimize inconvenience to the public due to disconnected utility services. Should it become necessary to temporarily disconnect any utility, Contractor shall first obtain the approval of the affected utility and the Project Manager. Such utility shall then not be disconnected before 9:00 A.M. and service shall be restored by 4:00 P.M. of the same day. If Contractor's operations require or cause utility service to be disconnected beyond the time limits stated above, he shall make arrangements suitable to the Project Manager to provide temporary utility service. Such temporary service shall be at Contractor's expense. Contractor agrees to pay the cost for any temporary utility service installed either by City forces or by a third party at the direction of the Project Manager.

(5) In the event that during construction, it is determined that any underground utility conduit, including sewers, water mains, gas mains, TV cable or drainage structures or any above ground utility facilities are required to be relocated, Contractor shall notify the utility owner in advance so that any such relocations can be completed without delay to the Work.

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j. Rules and Regulations of Department of Labor and Industrial Commission. Contractor shall comply with all applicable rules and regulations adopted by the Department of Labor and of the Industrial Commission of the State of Colorado or adopted by the City, whichever is more restrictive.

k. Insurance and Workers' Compensation Certificates. Contractor shall provide evidence of Workers' Compensation Insurance, Comprehensive General Liability Insurance and Automobile Liability Insurance naming the City as an additional insured on said policies as required under Section 33 below.

l. State Highway Right-of-Way.

(1) Colorado State Highway Right-of-Way shall be restored to original condition, including reseeding or sodding, if necessary. Contractor's equipment shall not be stored on traveled highway.

(2) Contractor shall ensure that no open cut is left during the hours of darkness. Road signs, delineators, etc. removed for the installation of utilities shall be restored per State Highway specifications.

(3) When applicable, Contractor shall use a scoring wheel for cutting asphalt.

m. Requests for Payment. Requests from Contractor for partial payment and final payment of amounts due under this Contract shall be on a form approved by the Project Manager. Such payment requests shall list separately each item included in the Contract Proposal. Payment shall be made in accordance with Section 18 and only for those items listed in the Contract Proposal and approved Change Orders, if any.

n. Notices. The address given in Contractor's Contract Proposal is hereby designated as the place to which all communications to Contractor shall be delivered or mailed. The delivery at the above named place by certified mail of any notice, letter or other communication to Contractor shall be considered adequate service upon Contractor, and the date of said service shall be the date of such delivery. Contractor's address may be changed at any time upon written notice to the Project Manager at least three (3) business days prior to such change.

o. Damages.

(1) Indemnification. Contractor shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations or omissions of Contractor or its employees, agents, representatives or other persons acting under Contractor's direction or control in performing or failing to perform the Services under this Agreement. Contractor shall indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the actions or omissions of Contractor and/or its employees, agents or representatives or other persons acting under Contractor's direction or control. The provisions set forth in this Section shall survive the completion of the Services and the satisfaction, expiration or termination of this Agreement.

(2) Survival; Withholding Payment. The provisions set forth in this Section 16(o) shall survive the completion of the Work and the satisfaction, expiration or termination of this

## CITY OF COMMERCE CITY

Contract. The City may, if it so desires, withhold payments due Contractor as long as shall be reasonably necessary to indemnify the City hereunder.

p. Patents and Copyrights.

(1) If Contractor uses any design, device, material or process covered by letters, patents, or copyright, in the construction of the Work under this Contract, the use of which has not been specified or required by the Drawings and Plans/Specifications, the right for such use shall be provided for by a suitable legal agreement with the patentee or owner. A copy of such agreement shall be filed with the City. Contractor and the Surety shall indemnify and save harmless the City from any and all claims including court costs and legal fees for infringements on any such patented design, device, material, process or any trademark, or copyright during the prosecution or after the completion of the Work.

(2) If any design, device, material, process, or product of a particular manufacturer covered by letters, patent or copyright is specified for use by the Drawings and Plans/Specifications, the City shall be responsible for any claims for infringement by reason of the use of any such design, device, material process, or product of a particular manufacturer, but Contractor shall pay any royalties or license fees therefore.

q. Protests.

(1) If Contractor considers any work demanded of it to be outside the Contract requirements, or if it considers any ruling of the Project Manager to be unfair, it shall immediately ask for a written instruction or decision and shall proceed to perform the work to conform to the Project Manager's ruling. If Contractor considers such instructions unsatisfactory, it shall, within fourteen (14) calendar days after receipt, file a written protest with the Project Manager stating its objections and the reasons therefore. Unless protests or objections are made in the manner specified and within the time limit stated herein, Contractor hereby waives all grounds for protest.

(2) Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled as set forth in Section 42 below.

r. Contractor's Right to Terminate Contract. If the Work should be stopped under an order of any court or other public authority for a period of ninety (90) consecutive calendar days or more, through no act or fault of Contractor, or of anyone employed by it, or should the City fail to make payments at the times provided in the Contract, Contractor shall, not earlier than seven (7) calendar days after giving written notice to the City, have the right to suspend work or, at its option, after thirty (30) calendar days have elapsed from date of said written notice, should the City continue to be in default, Contractor may terminate the Contract and recover the price of all work done and materials provided and all damages sustained. Such failure by the City to make payments at the times provided shall be a bar to any claim by the City against Contractor for delay in completion of the Work provided Contractor suspended the Work for that reason.

s. Civil Rights. In compliance with Title VI of the Civil Rights Act of 1964, coupled with the Colorado Governor's Executive Order dated July 6, 1972, Contractor, for itself and its assignees and successors in interest, agree as follows:

(1) Compliance with Regulations. Contractor shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of

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the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.

(2) Nondiscrimination. Contractor, with regard to the work performed by it after award and prior to completion of the Contract Work, shall not discriminate on the grounds of race, creed, color, gender or sex, age, religion, veteran status, national origin or ancestry in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by Section 21.5 of the Regulations including employment practices when the Contract covers a program set forth in Appendix "C" of the Regulations.

(3) Solicitations for Subcontractors. In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential Subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the regulations related to nondiscrimination on the grounds of race, creed, color, gender or sex, age, religion, veteran status, national origin or ancestry.

(4) Governor's Executive Order. Contractor shall take all affirmative actions necessary and appropriate to implement, not only the letter but also the spirit, of the policy of equality of opportunity as enunciated in the Constitution and the laws of the State of Colorado and as construed by the courts to prevent discrimination because of race, creed, color, gender or sex, age, religion, handicap, veterans status, national origin or ancestry.

(5) Incorporation of Provisions. Contractor shall include the provisions of these subsections 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, Contractor may request the City to enter into such litigation to protect the interest(s) of the City.

t. Americans with Disabilities Act. The City of Commerce City makes every attempt to comply with the Americans with Disabilities Act and requires all contractors to be aware of this law and to report immediately to the Commerce City A.D.A. Coordinator any requests or complaints based upon the Americans with Disabilities Act. This requirement applies to persons or groups who have identified themselves as disabled, or as someone with whom they associate as disabled, and who require a special accommodation.

### 17. PROGRESS AND CONTROL OF THE WORK

a. Commencement of the Work. Before work is started and materials ordered, Contractor shall meet and consult with the Project Manager relative to materials, equipment and all arrangements for commencing prosecuting the Work. The Work shall be commenced at such time and in or on such part or parts of the Project, and with such forces of workers, materials and equipment as may be required to complete the Work provided for in the Contract in a condition acceptable under the Contract and within the time specified therein.

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b. Progress. Contractor shall furnish a bar-chart schedule (Gantt Chart) of expected progress of the Work under the Contract showing approximate dates upon which each part or division of the Work is expected to begin and be finished. Contractor shall also, if so directed, forward to the Project Manager as soon as practical after the first day of each month, but not later than the 10<sup>th</sup> calendar day of each calendar month, a summary report of the progress of the various parts of the Work under Contract in the mills, shops and in the field, giving the existing status, rate of progress, estimated date of completion and cause of delay, if any.

c. Subcontracts. Contractor shall not sublet or subcontract any of the work to be done under the Contract until approval of such action has been obtained from the City through the Project Manager. Contractor agrees that it shall remain fully responsible to the City for the acts and omissions of its Subcontractors and any persons either directly or indirectly employed by its Subcontractors. Nothing contained in the Contract Documents shall be construed to create a contractual relationship between any Subcontractor and the City.

d. Delays and Extensions of Time.

(1) If Contractor is delayed at any time in the progress of the Work by any act or neglect of the City, by changes ordered in the Work, by strikes, lock-outs, fire, unusual delay in transportation, unavoidable casualties or any causes beyond Contractor's control or by any cause that the Project Manager decides justifies the delay, a request for an extension of the time for completion shall be submitted in writing to the Project Manager the first business day following such information becoming known to Contractor, and if in the opinion of the Project Manager such request is justified, such request shall be granted by written Change Order.

(2) An extension of time shall not be granted to Contractor for delays resulting from suspension of work due to any failure on Contractor's part to conform to the Plans/Drawings and Specifications.

(3) An extension of time shall not be made for any delay occurring more than seven (7) calendar days before claim therefore is made in writing to the Project Manager. In case of a continuing cause of delay, only one claim is necessary.

(4) If the Project Manager grants an extension of time pursuant to this Section, the Contract completion date as extended shall be in effect as though it were the contract time originally specified in the Contract.

(5) The cessation of work due to adverse weather shall not be construed as entitling Contractor to any extension of time within the meaning of this subsection d.

e. Final Inspection and Acceptance. When the Work is completed and the final cleanup has been performed, Contractor shall notify the Project Manager that all Work has been completed, and the Project Manager shall, within seven (7) working days after such notice, make the final inspection.

(1) If, upon final inspection, the Project Manager finds that the Work has been completed in accordance with the requirements set forth in the Contract Documents and Contractor has fulfilled all obligations under the Contract, the City, upon the recommendation of the Project Manager, will issue in writing a "Final Acceptance" of the Work. The date of Final Acceptance shall be the date from which the warranty period is measured.

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(2) If, upon final inspection, the Project Manager finds that the Work has not been completed in accordance with the requirements set forth in the Contract Documents or that Contractor has not fulfilled all obligations under the Contract, the City will not issue Final Acceptance, and the Project Manager shall compile a list of items that Contractor shall complete or fulfill to the Project Manager's satisfaction (the "Punch List"). The Punch List may identify corrective or replacement Work to be completed by Contractor, Contract obligations yet to be satisfied by Contractor or both such Work and Contract obligations.

(3) The Punch List shall be completed within fifteen (15) calendar days of substantial completion. If the time to complete the Punch List extends beyond the Contract completion date, liquidated damages for the period beyond the Contract completion date shall accrue in accordance with Section 31 in addition to the foregoing daily accrual of liquidated damages.

### **18. PAYMENTS TO CONTRACTOR**

a. Partial Payments. Partial payments shall be made to Contractor periodically as follows:

(1) The Project Manager must receive requests for partial payments no later than the tenth (10<sup>th</sup>) day of the calendar month for Work completed during the previous month. Payment requests shall be on a form approved by the Project Manager. Such payment requests shall list separately each item for which payment is requested, and payment shall be made only for those items listed in the Contract Proposal. The City shall have thirty (30) calendar days to process a progress payment after receipt of a request in proper form.

(2) From each such partial payment the City may retain ten percent (10%) for contracts that total less than One Hundred Fifty Thousand dollars (\$150,000.00). For contracts that total One Hundred Fifty Thousand dollars (\$150,000.00) or more, the City may retain five percent (5%) from each partial payment except that when five percent (5%) of the total estimated compensation has been retained, and the City is satisfied that Contractor is satisfactorily performing the Contract, further retention may be waived at the Project Manager's sole discretion.

(3) The withheld percentage (the "Retainage") shall be retained until the Contract is completed satisfactorily and finally accepted by the City; provided, however, that in the event Contractor has failed to fulfill a Contract obligation, or is delinquent with regard to any taxes, fees or other financial obligations owed to the City whether or not associated with the Project, the Project Manager may continue to withhold final payment even after final acceptance of the Work, and the City shall not be obligated to make final payment until resolution of the failure has been achieved.

(4) Bonus payments, if any, shall be paid at the time of partial payment without any portion being withheld.

(5) Partial payments shall not be construed as acceptance by the City of any part or the Work or of any material furnished, but merely as payment on an account.

b. Final Payment.

(1) Final payment shall not be issued until after Contractor has submitted the following to the Project Manager:

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(a) Weight tickets, invoices, delivery slips, sales tax reimbursement forms, certification of payment to all Subcontractors and suppliers and all documentation for materials incorporated into the Project. Only materials with such documentation shall be approved for payment.

(b) One (1) copy of the construction plans red lined with any modifications made portraying the complete construction “as built.”

(2) Within fifteen (15) calendar days after final acceptance of the Work, the Project Manager shall certify a final estimate showing the total Work.

(3) Subject to the provisions of subsection (a)(3) of this Section 18, the City shall make final payment to Contractor within thirty (30) calendar days after final acceptance of the Work.

(4) Final payment shall include the release of all Retainage and shall constitute full and complete payment for work, labor, materials, equipment and miscellaneous items in the Project.

### **19. SAFETY; SANITARY & CONSTRUCTION LAWS & REGULATIONS**

#### **a. Protection of Work and Property.**

(1) Contractor shall maintain adequate protection of all Work from damage and shall protect City property from injury or loss arising in connection with this Contract. Contractor shall indemnify the City from any such damage, injury or loss except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the City. Contractor shall protect adjacent property as herein provided. Contractor shall provide and maintain all passage ways, guard fences, lights and other facilities required by public authority or local conditions for protection of the public.

(2) Contractor shall be responsible for protection of all public and private property on and adjacent to the site of the Work. Contractor shall use every precaution necessary to prevent damage to pipes, conduits and other underground structures and to overhead wires. Contractor shall protect from disturbance or damage all land survey monuments and property markers until an authorized agent has witnessed or otherwise referenced their location(s) and shall not remove them until directed.

(3) If any of Contractor’s operations directly or indirectly destroy or damage any property, public or private, by or on account of any act, omission, neglect or misconduct in the execution of the Work, or in consequence of the non-execution thereof on its part, Contractor, at its, or its Surety’s, sole expense, shall promptly repair or replace such property to the satisfaction of the Project Manager before the City will accept or pay for the Work. If Contractor fails to repair or replace such property, the City, at its sole discretion, may undertake such repair or replacement and deduct the cost of the same from amounts payable to Contractor under the Contract.

(4) Except where construction is actually taking place on a sidewalk, construction signs shall not be placed on sidewalks.

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b. Accident Prevention. Contractor shall at all times take all precautions necessary to ensure the protection of the Work and the safety of the public. Contractor shall furnish, erect and maintain at its sole expense, all necessary barricades, suitable and sufficient flashers and construction signs and shall provide a sufficient number of flagmen and watchmen.

c. Sanitary Regulations. Contractor shall be responsible for providing proper health and sanitation facilities for its employees and Subcontractors.

(1) Contractor shall fully comply with all applicable rules and regulations of the Colorado Board of Health or other similar body.

(2) Contractor shall at all times provide a sufficient supply of safe drinking water for its employees and shall give orders against the use of water known or believed to be unsafe.

(3) At convenient places, Contractor shall provide fly-proof outside toilets, which shall be maintained in a sanitary condition. Toilets shall not be permitted in any water reservoir area and shall not be permitted where they may pollute a water supply.

d. Compliance with Construction Laws and Regulations. Contractor shall comply with all laws and ordinances, and the rules, regulations or orders, of all public authorities relating to the performance of the Work herein. If any provision of this Contract or the Documents attached hereto is at variance therewith, Contractor shall notify the Project Manager promptly on discovery of such variance.

### **20. PREVENTION OF WATER POLLUTION**

a. Contractor shall comply with applicable Federal and State laws, orders, rules and regulations concerning the control and abatement of water pollution.

b. If the City is determined by any federal, state, or local government agency, department, board or commission, or in any judicial proceeding, to have violated any such environmental protection rules, laws or regulations as a result of Contractor's acts or omissions, Contractor agrees to indemnify and hold harmless the City from any and all prosecutions, payment of any and all fines or penalties and the cost of abatement and remediation, except that Contractor shall not be required under this section to indemnify the City from any amounts attributable to the negligence of the City or its officers, agents or employees.

c. Contractor's construction activities shall be performed by methods that will prevent entrance, or accidental spillage, of solid matter, contaminants, debris and other pollutants and wastes into streams, flowing or dry watercourses and underground water sources. Such pollutants and wastes include, but are not limited to, refuse, garbage, cement, concrete, sewage effluent, industrial waste, radioactive substances, oil and other petroleum products, aggregate processing tailings, mineral salts and thermal pollution. Sanitary wastes shall be disposed of by land burial at approved sites or by other approved methods.

d. Dewatering work for structure foundations or earth work operations adjacent to, or encroaching on, lakes, streams, creeks or water courses shall be conducted in a manner to prevent muddy water and eroded materials from entering lakes, streams, creeks or water courses by construction of intercepting ditches, bypass channels, barriers, settling ponds or by other approved means. Excavated materials shall not be deposited or stored in, or alongside of, any lake or watercourse where it can be washed away by high water or storm runoff during a 100-year storm event or the equivalent thereof.



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e. Waste water from aggregate processing, concrete batching or other construction operations shall not enter the streams, creeks, watercourses or other surface waters without the use of turbidity control methods such as settling ponds, gravel-filter entrapment dikes, approved flocculation processes that are not harmful to fish, recirculation systems for washing of aggregates or other approved methods. Any waste waters discharged into surface waters shall conform to applicable discharge standards of the Colorado Department of Health and the Federal Government. The costs of complying with this Section shall be included in the price Bid in the Contract Proposal.

### **21. ABATEMENT OF AIR POLLUTION**

a. Contractor shall comply with all applicable Federal, State and local laws and regulations concerning the prevention and control of air pollution.

b. If the City is determined by any federal, state or local government agency, department, board or commission, or in any judicial proceeding, to have violated any such environmental protection rules, laws or regulations as a result of Contractor's acts or omissions, Contractor agrees to indemnify and hold harmless the City from any and all prosecutions, payment of any and all fines or penalties and the cost of abatement and remediation, except that Contractor shall not be required under this section to indemnify the City from any amounts attributable to the negligence of the City or its officers, agents or employees.

c. In the conduct of construction activities and operation of equipment, Contractor shall use such methods and devices as are reasonably available to control, prevent or otherwise minimize atmospheric emissions or discharges of air contaminants.

d. The emission of dust into the atmosphere is not permitted during the manufacture, handling or storage of concrete aggregates, and Contractor shall use such methods and equipment as are necessary for the collection and disposal, or prevention, of dust during these operations. Contractor's method(s) of storing and handling cement and pozzolans shall also include a means of eliminating atmospheric discharges of dust. Equipment and vehicles that show excessive emissions of exhaust gases due to poor engine adjustments, or other inefficient operating conditions, shall not be operated until corrective repairs or adjustments are made.

e. Burning of materials resulting from clearing of trees and brush, combustible construction materials and rubbish will be permitted only when Contractor has received a valid "BURNING PERMIT," issued by the Tri-County District Health Department, or successor health department, and such burning conforms to the requirements of the permit. The cost of complying with this Section 21 shall be included in the prices bid in the Contract Proposal.

### **22. DUST ABATEMENT**

a. During the performance of the Work or any operations appurtenant thereto, whether on right-of-way provided by the City or elsewhere, Contractor shall furnish all labor, equipment, materials and means required, and shall carry out proper and efficient measures whenever and as often as necessary, to reduce dust, and to prevent dust originating from Contractor's operations from damaging crops, orchards, cultivated fields and dwellings or from causing a nuisance to persons or animals.

b. If the City is determined by any federal, state, or local government agency, department, board or commission, or in any judicial proceeding, to have violated any such environmental protection rules, laws or regulations as a result of Contractor's acts or omissions, Contractor agrees to indemnify and hold harmless the City from any and all prosecutions, payment of any and all fines or penalties and the

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cost of abatement and remediation, except that Contractor shall not be required under this section to indemnify the City from any amounts which are attributable to the negligence of the City or its officers, agents or employees.

c. Contractor shall be held liable and shall indemnify the City from any damage resulting from dust originating from Contractor's operations.

d. The cost of sprinkling or of other methods of reducing formation of dust shall be included in the price Bid in the Contract Proposal. Contractor shall cooperate with the Project Manager and other public officials in such dust abatement.

### **23. SAMPLES AND TESTS**

a. In the absence of direct references, the sampling and testing of materials shall be done in accordance with the current accepted methods approved by the American Society for Testing and Materials, the American Association of State Highway and Transportation Officials or the State of Colorado, Department of Highways, Standard Specifications for Road and Bridge Construction – 2011. Contractor shall cooperate with the Project Manager in the collection and forwarding of required samples and shall furnish all samples and test results without charge to the City. All testing shall be conducted by an independent testing company or corporation. When required by the Contract Documents, certain specified materials shall not be incorporated into the Work until tests have been made and the material is found to be in accordance with the requirements of the Contract Documents. Contractor shall pay all costs of actual testing.

b. A joint (City and Contractor) pre-inspection of the site is required before mobilization. Contractor shall request such inspection, but if not requested and site inspected before the movement of any equipment onto the site, Contractor(s) of the site shall be understood to be without default. Contractor shall notify the Project Manager at least twenty-four (24) hours (one working day) in advance for all inspections when testing or sampling will take place.

The frequency of testing or sampling shall be in conformance with the most recent edition of the Field Materials Manual, Colorado Department of Transportation.

### **24. CONTRACT TIME**

The Work shall be commenced within seven (7) calendar days from and including the date of Notice to Proceed and shall be fully completed in a satisfactory and acceptable manner within the time stated in the Contract Documents. If the Work is not completed on or before that date, or an extension from that date, as allowed by the Project Manager, Contractor shall reimburse the City at the cost set forth in the Contract Documents as Liquidated Damages, not a penalty, in accordance with Section 31.

### **25. EXISTING STRUCTURES AND UTILITIES**

a. Available information on the location of existing substructures and utilities has been collected and is shown on the Drawings; the result of the investigations, however, are not guaranteed to be accurate or complete. It is Contractor's responsibility to verify all locations of existing structures and utilities shown on the Drawings and to ascertain whether any other structures and utilities may exist.

b. Temporary supports, adequate protection and maintenance of all underground and surface structures, drains, sewers and other obstructions encountered in the progress of work shall be furnished by Contractor at its expense and under the direction of the Project Manager. Any structures disturbed shall

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be restored upon completion of the Work. Contractor shall proceed with caution in the excavation and preparation of trenches so that the exact location of underground structures, both known and unknown, may be determined. Contractor, at its own expense, shall repair or replace any such structures or utilities that are broken or damaged.

c. All excavation, including shoring, pot-holing, hand digging, etc., for protection of existing structures and utilities shall be at Contractor's expense.

### **26. CLEANING AND RESTORATION**

a. Contractor shall frequently clean up, haul away and dispose of all refuse or scrap material resulting from the progress the Work, so that the site shall present a neat, orderly, safe and workmanlike appearance at all times. Contractor shall follow any and all direction from the Project Manager in this regard. Disposal of such materials shall be at an approved disposal site.

b. Upon completion of the Work, and prior to final inspection, Contractor shall remove from the construction site and any occupied adjoining property, all equipment, buildings, refuse, unused materials, forming lumber, sanitary facilities and any other materials belonging to or disposed of by Contractor or Subcontractors.

c. Any mud or other materials tracked or otherwise deposited on the roadway shall be removed daily, or as directed by the Project Manager. Contractor shall at all times protect driveways, irrigation crossings, mail boxes, shrubs, trees, sod, grass and other public and private improvements. Any such improvement damaged or destroyed by Contractor shall be repaired or replaced with like or better material at Contractor's expense before final payment is made.

d. In the event Contractor fails to clean up and restore the construction site satisfactorily within two (2) working days of completion of the Work, the City may, at its sole discretion, clean up and restore the site. The cost therefore shall be assessed against the final payment or charged to the account of Contractor's Surety.

e. Contractor shall provide and empty, each working day, one each thirty (30) gallon or larger trash can that shall be placed near each sanitary facility.

### **27. STANDARD SPECIFICATIONS AND METHODS OF TESTING MATERIALS**

References are made in the Contract Documents to standard specifications, methods of testing materials, codes, practices and requirements. Whenever such references are made, it shall be understood that the edition of each respective specification, method for testing materials, code, practice or requirements in effect on the date of the Invitation to Bid shall govern unless a specific revision is referenced. Wherever any of the following abbreviations appear in the Contract Documents, they shall have the following meanings:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACPA	American Concrete Pipe Association
ACOE	Army, Corps of Engineers
AGC	Associated General Contractors of America, Inc.
AIA	American Institute of Architects

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AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
APA	American Plywood Association
APHA	American Public Health Association
APWA	American Public Works Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWS	American Welding Society
AWSC	American Welding Society Code
AWWA	American Water Works Association
CDH	Colorado Department of Highways (CDOH)
CDT	Colorado Department of Transportation (CDOT)
COE	Corps of Engineers
IEEE	Institute of Electrical and Electronic Engineer
MUTCD	Manual on Uniform Traffic Control Devices
NBS	National Bureau of Standards
NCPI	National Clay Pipe Institute
NEC	National Electric Code
NEMA	National Electrical Manufacturer's Association
SAME	Society of American Military Engineers

### **28. SALES AND USE TAX**

a. Unless specifically exempt, all construction within the City is taxable, including construction performed by a contractor on behalf of an exempt institution or governmental, religious, charitable, private or any other type of owner including the City.

b. The contractor working on such construction projects is subject to the tax on all purchases, fabrication, manufacture or other production of tangible personal property used, stored or consumed on those projects, including parking lots, roads, bridges, highways, building construction and remodeling of both public and private facilities.

c. Specific Industry Standard for Construction and Contractors (Regulation 20-S.I.15) can be provided upon request by contacting the Finance Department of the City of Commerce City, Sales Tax Division, phone number 303-289-3628.

d. Prior to or on the date Contractor locates equipment within the City to fulfill the contract, Contractor shall file a declaration describing each anticipated piece of equipment the purchase price of

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which was two thousand five hundred dollars (\$2,500) or greater, stating the dates on which Contractor anticipates the equipment to be located within and removed from the boundaries of the City and stating the actual or anticipated purchase price of each such anticipated piece of equipment along with any other information deemed necessary by the City. When such declared equipment is located within the City for a period of thirty (30) days or less, Contractor may include sales and use tax calculated on one-twelfth (1/12) of the purchase price of such equipment in the contract amount, in compliance with Section 20-5-V of the Commerce City Sales and Use Tax Code. If Contractor fails to declare the equipment to the City prior to or on the date Contractor locates the equipment within the City, none of the sales and use tax due on the equipment shall be allowed as a contract expense.

### **29. CONTRACTOR'S LICENSES AND PERMITS**

Contractor and every Subcontractor shall be responsible for obtaining all licenses required for the Work, including a City Contractor's license. Likewise, Contractor shall be responsible to obtain any and all permits required for the Work. No charge will be made for any City permit required for the Project. However, Contractor shall pay any and all City license fees.

### **30. OVERTIME FOR CITY INSPECTORS**

When City inspectors are required to work overtime, the cost shall be at Contractor's expense, as determined by the Project Manager. The fee charged shall not exceed Fifty Dollars (\$50.00) per hour, and it shall be charged "portal to portal" from the City offices. Overtime will be charged only for inspections occurring before 7 a.m. or after 5 p.m. on weekdays and anytime on weekends or on City holidays.

### **31. LIQUIDATED DAMAGES**

a. It is mutually understood and agreed by and between the parties to these Contract Documents, in the execution of the same, that time is of the essence in the performance of this Contract. It is expressly agreed to by the parties that actual damages are incapable of calculation. **The Owner has identified May 28<sup>th</sup>, 2015, as the deadline for the certificate of occupancy and schedules should be structured around this milestone.** In the event that Contractor fails to complete the Work to be performed under this Contract by and at the completion time required in this Contract, after due allowance for any extension(s) of time made in accordance with this Contract, Contractor shall pay unto the City as and for Liquidated Damages, and not as a penalty:

(1) For each and every calendar day Contractor is in default of completing the entire Project beyond May 28, 2015, the sum of \$500 per calendar day;

(2) For failure to complete the Work as itemized in Section 16(f), the sum of \$100 per day; and

(3) For failure to complete the Punch List pursuant to Section 17(e)(3), the sum of \$100 per day.

b. Extensions of time granted by the City in accordance with the provisions of the section titled "Progress and Control of the Work: Delays and Extension of Time" in these General Conditions shall not operate to the contrary, unless such extensions granted by the City specifically provide for the waiving of Liquidated Damages during and over such period of time extension.

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c. The Contract Period from which the Contract date shall be measured is the date that the City dates and signs the Notice to Proceed.

d. Liquidated Damages shall be waived for and during the extent of any delay caused by the inability of Contractor to obtain materials or equipment by reason of Federal embargoes, priority government orders or other restrictions imposed by the United States Government, provided that adequate evidence is presented by Contractor to prove such delay and to enable the City to determine with exactness the extent and duration of such delay for each item of material and equipment involved. Provided, however, any extensions of time for performance of the Contract except for weather conditions as provided in the section titled "Duties of Project Manager" under "Suspension of Work – Weather Conditions" and "Weather Days," must be granted by a written Change Order to permit Liquidated Damages to be waived for any such delay.

e. The City shall have the right to deduct said Liquidated Damages from any monies in its hands, otherwise due, or to become due, to Contractor or to sue for and recover compensation for damages for nonperformance of this Contract at the time stipulated herein and provided for.

### **32. ASSIGNMENT OF CONTRACTS**

There shall be no assignment of this Contract or any portion thereof without the express written consent of the City.

### **33. BOND, INDEMNIFICATION AND INSURANCE REQUIREMENTS:**

a. Indemnification. To the fullest extent provided by law, Contractor shall indemnify and save harmless the City and its officers, agents, and employees as provided in Section 16(o) above. However, Contractor shall not be required to indemnify the City from any amounts attributable to the negligence of the City or its officers, agents and employees.

b. Insurance. Contractor shall not commence work under this Contract until it has obtained all insurance required by the Contract Documents and such insurance has been approved by the City. Contractor shall not allow any Subcontractor to commence work on the Project until all similar insurance required of the Subcontractor has been obtained and approved. During the life of this Contract, and for six (6) months after completion thereof, Contractor and any Subcontractor shall procure and keep in force the insurance policies set forth below:

(1) Comprehensive General Liability Insurance insuring Contractor and the City, including any officer or agent of the City, against any liability for personal injury, bodily injury or death, including loss or damage due to fire, arising out of any act or omission of the Contractor or its agents, employees or Subcontractors with at least Two Million Dollars (\$2,000,000) each occurrence. The limits of said insurance shall not, however, limit the liability of Contractor hereunder. The policy shall include the following coverages:

(a) Broad form property damage;

(b) Operations-premises liability;

(c) Personal and advertising injury liability;

(d) Explosion, collapse and underground liability (if the Work requires blasting, explosive conditions, collapse hazards or underground operations, this coverage

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shall contain no exclusion relative to property in the care, custody or control of the insured);

- (e) Independent Contractors Coverage;
- (f) Contractual Liability;
- (g) Completed operations/products liability;
- (h) Coverage for construction, means and methods.

(2) Workers' Compensation Insurance as required in the Colorado Workers' Compensation Act covering all employees at the Project site.

(3) Automobile Liability Insurance insuring Contractor, Subcontractors and the City, including any officer or agent of the City, against any liability for personal injury, bodily injury or death arising out of the use of motor vehicles and covering operations on or off the Project site of all motor vehicles controlled by Contractor (or a Subcontractor, as applicable) that are used in connection with the Work, whether the motor vehicles are owned, non-owned or hired, with a combined single limit of at least Two Million Dollars (\$2,000,000).

(4) Builder's Risk Insurance in an amount acceptable to the City.

c. Insurance Requirements.

(1) Insurance required by this Section shall be with companies qualified to do business in the State of Colorado and may provide for deductible amounts as Contractor deems reasonable for the Services, but in no event greater than Twenty Thousand Dollars (\$20,000). Each insurance policy shall contain a clause providing that it shall not be canceled or materially altered without thirty (30) days prior written notice to the City. Insurance obtained by Contractor shall be subject to approval by the City, but neither approval by the City of any insurance supplied by Contractor or a Subcontractor nor failure to disapprove such insurance shall relieve Contractor or any Subcontractor of their obligation to maintain all required insurance throughout the life of the Contract.

(2) No "Pollution Exclusion."

a) The insurance required by this Section shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise.

b) In the event Contractor is unable to procure a policy of comprehensive general liability insurance in compliance with the provisions of this subsection (2), Contractor shall secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims or suits, as described in subsection b(1) of this Section, with at least One Million Dollars (\$1,000,000) each occurrence, subject to approval by the City, which approval shall not be unreasonably withheld.

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d. Proof of Insurance. When Contractor executes the Contract, Contractor shall furnish to the City and the Project Manager Certificates of Insurance evidencing that all required insurance is in full force and effect. Contractor shall require any Subcontractor to submit similar evidence before undertaking work under this Contract.

e. Receipt and Application of Proceeds of Insurance. Any insured loss under the policies of insurance required by this Part or the Special Conditions, if any, shall be adjusted with City and made payable to the City as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause. The City shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

f. Adjustment and Settlement of Insurance Claims. The City as trustee shall have power to adjust and settle any loss with the insurers unless a party in interest objects in writing within fifteen (15) days after the occurrence of loss to the City's exercise of this power. If such objection be made, the City as trustee shall make settlement only with the insurers in accordance with such agreement as the parties in interest may reach.

g. Payment and Performance and Other Bonds.

(1) The payment bond form and the performance bond form found elsewhere in this document or forms substantially similar thereto, at the sole discretion of the City, are to be copied, completed and attached. No combined form shall be allowed. Each bond shall be separate and on the prescribed form.

(2) Contractor shall furnish a Payment Bond and a Performance Bond, each in an amount equal to at least the amount of the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until one (1) year after the date of final payment. Contractor shall also furnish such other Bonds as are required by the Special Conditions (if any).

(3) All Bonds shall be in the forms prescribed by the Contract Documents and executed by such Sureties as: (i) are licensed to conduct business in the State of Colorado; and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Chapter 570 (amended) by the Audit Staff, Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the Authority to Act.

(4) If the Surety on any Bond furnished by Contractor is declared bankrupt, becomes insolvent, has its right to do business in Colorado terminated or it ceases to meet the requirements of clauses (i) and (ii) of subsection f(3) herein, Contractor shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to the City.

h. Notice of Changes in Work. If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it shall be Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to the City.



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### 34. VALUE ENGINEERING

Value engineering includes changes in materials or methods used that will reduce the amount of the Contract and will preserve the integrity of the Work without reducing quantities completed. Proposed changes in materials or methods used must be approved by the Project Manager and any agency having jurisdiction over the affected work before such work is attempted. Contractor shall be paid fifty percent (50%) of all identifiable cost savings resulting from said value engineering approved and accepted. A Change Order must be issued to effect such value engineering task.

### 35. SALVAGE

Items removed by Contractor and not required for repositioning by this Contract shall become the property of Contractor unless other disposition is required by these Contract Documents. Contractor may reuse such items elsewhere or on other contracts, sell such items with proceeds of said sale becoming the property of Contractor or otherwise dispose of such items from the Project site. Items removed by Contractor that do not have any salvage value are to be disposed of by Contractor at an approved dump.

### 36. APPROVAL OF MATERIALS AND EQUIPMENT

a. Submission of Samples and Data. Samples, drawings, catalogue cuts and other data shall be submitted for approval of the Project Manager as required by the various sections of the Contract Documents. Items submitted shall be properly labeled to indicate the Contract number, Project name, Contractor, source of supply, manufacturer and other data required by the particular specification. All items shall be submitted in sufficient time to permit proper consideration and action thereon without delaying the approved progress schedule. Items sent for approval shall be shipped prepaid by Contractor.

b. Approval. Only materials and equipment that have been approved by the Project Manager in writing shall be used in the Work. All materials and equipment may be inspected or tested by the Project Manager at any time during their preparation and use. If, after testing, it is found that approved sources of supply do not furnish a uniform product, or if the product from any source proves to be unacceptable at any time, Contractor shall furnish approved materials from other sources. No materials that have in any way become unfit for use shall be used in the Work.

c. Testing. Contractor shall perform testing in accordance with the contract documents.

(1) Manufacturer's Certificate of Compliance. For standard labeled stock products of standard manufacture that have a record of satisfactory performance in similar work over a period of not less than two (2) years, the Project Manager may accept a notarized statement from the manufacturer certifying that the product conforms to the applicable specifications.

(2) Mill Certificates. For materials where such practice is the usual standard, the Project Manager may accept the manufacturer's certified mill and laboratory certificate.

(3) Testing Laboratory Certificates. The Project Manager may accept a certificate from an independent commercial testing laboratory satisfactory certifying that the product has been tested within a period acceptable to the Project Manager and that it conforms to the requirements of the Plans and Specifications.

(4) Report of Actual Laboratory Test. The Project Manager may require that Contractor make actual tests of any product and submit a report of the specified test. Such test

## **CITY OF COMMERCE CITY**

shall be made by a commercial testing laboratory satisfactory to the Project Manager at Contractor's sole expense.

d. Retesting. The cost of any additional laboratory tests required through the resubmission of samples shall be borne by Contractor and shall be deducted from any money due it on this Contract.

### **37. DUTIES AND OBLIGATIONS**

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitations, the warranties, guarantees and obligations imposed upon Contractor and all of the rights and remedies available to the City and the Project Manager thereunder, shall be in addition to, and shall not be construed in any way as limitation of, any rights and remedies available to any or all of them that are otherwise imposed or available by law or contract, by special warranty or guarantee or by other provisions of the Contract Documents, and provisions of this Section shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representation, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Contract.

### **38. COMMUNICATIONS REGARDING THE WORK**

All communications to the City regarding the Work that is the subject of this Contract shall be directed to the attention of the Project Manager.

### **39. WARRANTY**

Contractor warrants all work, as specified in the Contract Documents, and the work of all agents, employees and Subcontractors against all deficiencies and/or defects in materials and/or workmanship for a period of one (1) year from the date found on the "Letter of Final Acceptance." Contractor further agrees to satisfy such warranty obligations that appear within the warranty period within fourteen (14) calendar days from receipt of written notice of deficiencies and/or defects and without cost to the City.

### **40. CONTRACTOR'S SIGNS**

No signs with Contractor's name, logo, telephone number, address or, (etc.), shall be placed on any pole, road, structure or other surface, unless approved in writing, and in advance of such placement, by the Project Manager.

### **41. COOPERATION WITH UTILITY OWNERS**

Contractor shall cooperate with utility owners in any removal and relocation operations, so progress is expedited, duplication of work is minimized and service interruptions are avoided. Additional compensation will be allowed for foreseeable coordination, inconvenience or damage sustained due to interference from utility facilities or the removal or relocation operations as indicated in the Contract. Use of City rights-of-way by utility companies for utility lines is a common practice, and delays related to relocate utility lines should be anticipated.

### **42. DISPUTE RESOLUTION**

a. If any dispute remains unresolved after negotiation between the City and Contractor, the parties shall submit the dispute to non-binding mediation, which shall be a condition precedent to

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commencing litigation. The mediator shall be a trained mediator having experience related to municipal construction projects. The parties shall jointly select the mediator from a list of mediators proposed by the parties. In the event the parties are unable to agree on a mediator, each party shall choose a mediator, and those two mediators shall choose a single mediator. No discussions or statements of the mediator may be admitted as evidence in any subsequent litigation, nor may the mediator be called to testify in any litigation.

b. In the event any dispute, mediation or litigation arises out of this Contract and during the time such dispute, mediation or litigation is pending, Contractor shall continue performance under the Contract in accordance with the terms and conditions hereof. Contractor's failure to continue expeditious performance due to a dispute arising under this Contract shall, at the option of the City, be construed as a material breach of this Contract justifying termination or other such action as the City deems appropriate.

## CITY OF COMMERCE CITY



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Commerce City, Colorado 80022  
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### EQUIPMENT DECLARATION

Company: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Job Address: \_\_\_\_\_

State and Zip: \_\_\_\_\_

**Note:** Construction equipment that was not otherwise subjected to the Commerce City sales or use tax, and which is located within the boundaries of the City of Commerce City for a period of thirty (30) consecutive days or less, shall be subjected to the use tax of Commerce City on a prorated basis if the equipment is declared in advance. **If the equipment is not declared in advance or is located within the City for over thirty (30) consecutive days, the amount of tax due will be calculated on 100% of the original purchase price.**

The tax on Declared Equipment shall be calculated using the following method: **The original purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one (1) and the denominator which is twelve (12); and the result shall be multiplied by three and one-half percent (3.5%) to determine the amount of Use Tax payable to the City.** (Example: thirty (30) days or less =  $1/12 \times \text{purchase price of the equipment} \times 3.5\%$ )

In order for a taxpayer to qualify for this exemption, the taxpayer must comply with the procedures described in Section 29-2-109(4) of the Colorado Revised Statutes by completing this form and remitting the tax due to the Finance Department of the City of Commerce City. **If the taxpayer does not file this form the exemption herein provided for shall be deemed waived by the taxpayer.**

**A separate declaration form must be used for each individual piece of equipment.**

#### **Construction Equipment Declared:**

Description of Equipment and/or VIN number: \_\_\_\_\_

Purchase price of above equipment and date purchased: \_\_\_\_\_

Date equipment will enter the City: \_\_\_\_\_

Date equipment will be removed from the City: \_\_\_\_\_

**CITY OF COMMERCE CITY**

**ADDENDA**

(Staple any Addenda, if applicable, to this page)

**CITY OF COMMERCE CITY**

**SCHEDULE(S) OF CONSTRUCTION**  
(Staple Schedule(s) to this page).

**CITY OF COMMERCE CITY**

**DRAWINGS**

(Attach Drawings to the rear cover of these Contract Documents)

**CITY OF COMMERCE CITY**

**CHANGE ORDERS (when issued)**  
(Staple any Change Orders to this page).



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**SPECIAL CONDITIONS**  
*(Following This Page)*