

2024
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF COMMERCE CITY AND ALLIED UNIVERSAL
FOR UNIFORMED SECURITY SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into effective this **1st** day of **March 2024** (“Effective Date”) by and between the **CITY OF COMMERCE CITY**, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado (“City”), and **ALLIED UNIVERSAL**, a Pennsylvania corporation whose principal business address Eight Tower Bridge, 161 Washington Street, Suite 600, Conshohocken, PA 19428 (“Contractor”).

WHEREAS, the City desires to retain the services of Contractor, and Contractor desires to provide services to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. SERVICES.

A. Services. At the City’s direction, Contractor will provide Uniformed Security Services as set forth in Exhibit A – “Scope of Services,” attached and incorporated by reference (“Services”). Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services. The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to Contractor without penalty. Contractor acknowledges that this Agreement does not grant any exclusive privilege or right to supply the Services to the City.

B. Changes to Scope of Services. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit, or implied contract. Except as expressly provided herein, no agent, employee, or representative of the City is authorized to modify any term of this Agreement, either directly or implied by a course of action.

C. Controlling Terms. The terms of this Agreement will control if the terms of any exhibit, attachment, or invoice conflict with this Agreement. Additional terms and conditions not specifically relating to the Services (such as unnegotiated or form terms included in any related proposal, quote, invoice, terms and conditions sheet or like document, or any attachment), whether or not in conflict with this Agreement, are not agreed to by the City and are declared void and of no force or effect.

D. Format and Ownership of Deliverables.

1. Format. Contractor will provide all reports, surveys, maps, plans, drawings or photographs, or any other materials that lend themselves to production in electronic format (“Deliverables”) to the City in both hard copy and electronic formats acceptable to the City, unless otherwise directed by the City in writing. Contractor’s failure to do so will constitute a material breach of this Agreement. Contractor will consult with the City to determine acceptable electronic formats before beginning the Services. All Deliverables and other tangible materials produced by Contractor pursuant to this Agreement will at all times be considered the property of the City. Deliverables which include spatial data that is intended for use within the City’s GIS will be an Esri file geodatabase (.gdb), or a shapefile (.shp), or an AutoCAD drawing file (.dwg). All Deliverables will contain a file describing the

coordinate systems used. Contractor will provide complete metadata (who, what, when, where, how) for all provided spatial data and related information, including but not limited to the following: file description, attribute descriptions, author and contact information (credit), and date created.

2. Digital Images. Contractor will provide non-copyrighted, high-resolution, illustrative digital images of project site plans, elevations, renderings, photos, and other Deliverables, as directed by the City, suitable for reproduction of and dissemination in marketing materials and at City Council hearings and public presentations. Contractor will affirm that the images do not violate copyright laws and will indemnify and hold harmless the City from liability for any expense, cost, loss, or damage resulting from any claim of copyright infringement arising from the City's use of the images. All images provided will become the property of the City.

3. Ownership. Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor in the course of performance of the Services shall be exclusively owned by the City. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the City all of its right, title, and interest in such work. The City may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

E. Contractor Representations; Standard of Care. Contractor represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws. Contractor acknowledges that the City is relying on Contractor's expertise, skill, and knowledge and that Contractor's obligations and liabilities will not be diminished by reason of any approval or review by the City. Contractor represents that the Services provided: (i) will be performed in accordance with the applicable professional standard of care of a reasonable professional that is performing the same or similar work at the same time and locality and under the same or similar conditions faced by Contractor, and (ii) will be performed in a timely manner as required by the Agreement and performed and supervised by qualified personnel. Contractor further represents that all application software developed or implemented by Contractor under this Agreement, when used in accordance with its associated documentation, shall not infringe upon the rights or marks of a third party. Lastly, Contractor represents that it is not a party to nor subject to any agreement or order which would limit, prevent, or restrict its performance of any Services.

F. Prosecution of the Services. Contractor will perform all work in a professional, workmanlike, and timely manner. Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all materials produced and other services furnished by the Contractor under this Agreement. Contractor will provide all labor, materials, tools, supplies, machinery, utilities, and other equipment that may be necessary for the prompt completion of the Services. Contractor will monitor, supervise, and otherwise control and be solely responsible for all persons or entities performing work on its behalf. The Services to be performed by Contractor hereunder shall be done in compliance with any and all applicable laws, ordinances, rules, and regulations. All work, if related to construction, will be performed in accordance with the City's Engineering Standards and Specifications.

G. Correction of Errors. Contractor will promptly correct any errors or omissions in its work and any work deemed unsatisfactory or unacceptable by the City for no additional compensation and without limiting any other express or implied remedies of the City.

H. Subcontractors. Contractor will not engage subcontractors to perform any part of the Services other than for the provision of goods, materials, or supplies without the City's express written consent.

I. Licenses, Permits, & Taxes. Contractor and each subcontractor will be responsible to obtain all required licenses and permits, including a City Contractor's license if required. Contractor will pay any and all license and permit fees. Contractor is responsible for the payment of applicable taxes, including the City's sales and use tax, if applicable.

J. Time for Completion. Contractor shall complete all Services to the City's satisfaction as set forth in Exhibit A -"Scope of Services" by end of each term. The first term will conclude December 31, 2024. Further, Contractor shall fully perform, complete, or present all identified tasks, sub-tasks, and Deliverable items by the deadline(s) established in the Scope of Services, as applicable. Contractor's rate of progress is a material term of this Agreement. At the City's request, Contractor will provide a progress schedule for the performance of any Services subject to the City's approval.

K. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Contractor will cooperate with the City relating to such monitoring and evaluation.

L. Drugs, Alcohol, Workplace Violence, and Harassment; Compliance with Applicable Law. Contractor and its employees and agents, while performing the Services or while on City property for any reason during the Term, will adhere to the City's policies applicable to City employees regarding drugs, alcohol, workplace violence, and harassment. Policies will be made available to Contractor upon request. Contractor will comply with all applicable federal, state, and local laws, ordinances, and regulations.

M. Non-Exclusivity. The City may engage the services of other persons for the provision of Services that could be performed under this Agreement. Contractor acknowledges that it is not entitled to perform any work except as assigned under this Agreement and is not guaranteed any amount of work.

II. COMPENSATION.

A. Amount. As compensation for performance of the Services and any other obligations under this Agreement, the City will pay Contractor for work performed, per the rates set forth in Exhibit A, a sum not to exceed **\$550,000.00 over the course of four (4) years if extended**. The compensation established by this Agreement includes all of Contractor's costs and expenses to fully perform the Services and other obligations of this Agreement for the Term, as defined below. The City shall not be obligated to pay any late fees or interest. The City will not consider or be obligated to pay or reimburse Contractor any other charges or fees, and Contractor will not be entitled to any additional compensation or reimbursement.

B. Invoices. Contractor will submit invoices on a monthly basis in a format approved by the City and provide verification documentation as requested by the City. Invoices will be submitted to the City not more frequently than monthly. Invoices will identify the specific Services performed for which payment is requested, including a description of the Services, the applicable rates, any costs for which Contractor seeks reimbursement, the hours worked by each employee for the billing period, and the total amount that Contractor claims is due. The Contractor must also submit documentation supporting the charges in the invoice, which must be consistent with this Agreement and must include a reference to this Agreement on each invoice.

C. Representation. By submitting an invoice, Contractor warrants that: (i) the work covered by previous invoices is free and clear of liens, claims, security interests, or encumbrances, except for any interest created by retainage; and (iii) no work covered by the invoice is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Contractor or any other person or entity. Contractor shall not include in its invoice any billing for defective

work or work performed by subcontractors or suppliers if it does not intend to pay the subcontractors or suppliers for such work.

D. Payment. The City will make payment to Contractor within thirty (30) days after receipt and approval of invoices submitted by Contractor. The City's obligation to make payment is contingent upon the Contractor's (a) submission of a complete and accurate invoice and (b) satisfactory performance of the Services and conditions of this Agreement. The City may withhold payment of any disputed amounts, and no interest will accrue on any amount withheld pending the resolution of the dispute. The City's review, approval, or acceptance of, or payment for any Services shall not be construed to operate as a waiver of any rights under this Agreement or a waiver of any cause of action arising out of the performance of this Agreement.

E. IRS Form W-9. If not on file with the City, the Contractor will provide the City a current, completed Internal Revenue Service Form W-9 with or before the Contractor's first invoice. Failure to submit a W-9 may delay or cancel payment under this Agreement.

F. Subject to Annual Appropriation. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 12, Chapter XII of the Charter of the City of Commerce City. Contractor acknowledges and accepts that nothing herein shall constitute or be deemed to constitute the creation of any multiple fiscal-year debt, liability, or financial obligation of the City. Further, Contractor acknowledges and accepts that no provision of this Agreement shall be construed to create any obligation of future monetary appropriations by the City Council of Commerce City that may run contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or Charter debt limitation. Contractor acknowledges that the City has made no promise to continue to budget funds beyond the current fiscal year and further acknowledges that the City has made no promise that it will pledge adequate cash reserves on a fiscal-year by fiscal-year basis, notwithstanding any provision of this Agreement that may be construed to the contrary. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation or liability of the City which may arise under this Agreement in any fiscal year after the date of execution shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

G. Changed Conditions. Contractor agrees that, by careful examination, it is satisfied as to the nature and location of the Services, the conformation of the ground, the character, quality, and quantity of the materials to be encountered, the character of equipment and facilities needed before beginning and for the Services, the general and local conditions, and all other matters, which can in any way affect the performance of the Services. Contractor specifically waives any claim for additional compensation for any changed condition arising out of any one or more of the following, unless such changed condition is caused in whole or in part by acts or omissions within the City's control: (1) a physical condition of the site of an unusual nature; (2) any condition differing materially from those ordinarily encountered and generally recognized as inherent in work or services of the character and at the location provided for in this Agreement; or (3) any force majeure.

III. TERM AND TERMINATION.

A. Term.

1. The term of this Contract agreement shall be for one year commencing on January 1, 2024, and terminating on December 31, 2024 (Base Term), unless previously terminated. The Base Term of this Contract agreement may be extended in writing upon the mutual consent of the City Manager of Commerce City and Allied Universal (Contractor) for one (1) year terms ("Extension Term") but may not exceed a total of three (3) Extension Terms.

2. By September 1, preceding any Extension Term, Allied Universal, consistent with the Notice provision set forth herein, if interested in renewal, must notify Commerce City in writing, signed by the General Manager, of their interest in renewing and any proposed changes in the Fee Schedule must be submitted with the request for renewal. Any renewal period must be approved in writing by agreement of the Parties.

B. Termination

1. For Convenience. Contractor agrees that the City may terminate this Agreement without cause at any time for the convenience of the City. Contractor assumes all risks of being terminated for convenience, whether such risks are known or unknown, and acknowledges that the City's decision to terminate for convenience lies solely within the City's own discretion. Contractor represents that it is a sophisticated business, has entered into the Agreement voluntarily, and has calculated all business risks associated with this Agreement. In the event of a termination for convenience, the City will provide written notice of termination to Contractor at least fourteen (14) calendar days prior to the effective date of termination. Contractor expressly agrees to and assumes the risk that the City shall not be liable for any costs or fees of whatsoever kind and nature if termination for convenience occurs before Contractor begins any Services or portion of the Services. Once Contractor has commenced the performance of the Services, Contractor expressly agrees that the City shall be liable only for work Contractor satisfactorily completed up to the point of the effective date of the notice of termination, consistent with Section III(C) of this Agreement. The Contractor shall have no claim of any kind whatsoever against the City for any termination for convenience, except for compensation for work completed to the satisfaction of the City.

2. For Cause. If, through any cause, Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law relating to the performance of this Agreement ("Breach"), the City may terminate this Agreement for cause immediately upon written notice of termination to Contractor. Contractor will not be relieved of liability to the City for any damages sustained by the City by virtue of any Breach, and the City may withhold payment to Contractor for the purposes of setoff until such time as the exact amount of damages due to the City from Contractor is determined. If Contractor challenges a termination for cause by the City and prevails on all grounds asserted as a basis for such termination, the termination for cause will be deemed to be a termination for convenience and will be effective fourteen (14) days from the date that the original written notice of termination for cause was given to Contractor; no further notice will be required. As an alternative to immediate termination of the Agreement, the City may, but is not required, to provide written notice of a Breach to the Contractor and allow the Contractor a reasonable period of time to cure the Breach, subject to the discretion of the City.

The occurrence of any one or more of the following as set forth in this non-exhaustive list shall constitute a Breach:

- a) The Contractor fails or refuses to expeditiously and actively undertake or substantially or timely perform its responsibilities and obligations, or fails or refuses to make adequate progress in performing its responsibilities and obligations under this Agreement, including those stated in the Scope of Services;
- b) There is substantial evidence that it has been or will be impossible for the Contractor to perform the Services required due to matters within the Contractor's control, such as voluntary

bankruptcy, strikes, boycotts, and labor disputes involving the Contractor's employees or closure or suspension of operations by regulatory order of a governmental entity or an order of a court due to violations or infractions by the Contractor or the Contractor's employees;

c) The Contractor has submitted requests for payment under this Agreement that are fraudulent or persistently or flagrantly erroneous or misleading;

d) The Contractor has made an assignment or transfer of, or subcontracts, any or all of its responsibilities and obligations under this Agreement in violation of the terms of this Agreement;

e) The Contractor fails to obtain, renew, replace, or maintain the insurance coverage required by this Agreement, or causes or is at fault for damage to property or injury to persons that are not covered or not adequately covered by insurance and the Contractor fails to remedy the situation to the satisfaction of the City;

f) The Contractor fails to obtain or properly and timely maintain any financial assurances required by this Agreement;

g) Any lien is filed against City property because of any act or omission of the Contractor and is not timely discharged unless the Contractor furnishes to the City such bond or other financial assurance reasonably acceptable to protect the interests of the City;

h) The Contractor has failed to obtain or maintain any required permit or license or has utilized personnel or workers not licensed or registered as required by law;

i) The Contractor has failed to deliver title or warranties or has failed to honor warranties as required by this Agreement;

j) The Contractor has flagrantly or persistently failed or refused to comply with any applicable laws or City policies, or fails or refuses to rectify any condition or situation in violation of applicable law or City policies;

k) The Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Contractor's business.

3. For Non-Appropriation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any Work Order, sub-agreement, attachment, schedule, or exhibit thereto, by the City.

C. Effect of Termination.

1. For termination pursuant to either Section III(B)(1) or (2), above, the City will be liable only for Services Contractor performed that were actually requested by the City and completed to the City's satisfaction up to the date of the effective date of termination.

2. For termination pursuant to Section III(B)(3), above, the City will be liable only for Services that Contractor performed that was actually requested by the City and completed to the City's satisfaction up to the date of the effective date of termination, to the extent that the budget for the year of such termination provided sufficient funds to discharge such obligation.

3. Following termination for any reason, under no circumstances will the City be liable for any costs related to Services not performed to the satisfaction of the City, any Services not requested by the City, or any Services that the City directed the Contractor to not perform. The City will not be liable to Contractor for any unperformed Services, anticipated profits, overhead, mobilization or demobilization costs, administrative costs, productivity costs, losses on disposal of equipment or materials, costs associated with the termination of subcontractors, costs associated with purchase orders or purchases, or any other costs or fees of any kind and nature.

4. Upon receipt of a notice of termination, Contractor will:

a) Immediately discontinue performance of the Services (unless otherwise instructed in writing);

b) Take reasonable actions necessary, or as the City may direct, for the protection and preservation of completed or partial work;

c) Provide the City with all drawings, specifications, photographs, data, and other pertinent documents and information relating to work completed or partially completed, in either their original format or such other commercially reasonable format as the City may direct; and

d) Cooperate in all respects with the City, which cooperation shall include, but not be limited to, all of the foregoing obligations listed herein, as well as assisting the City during a transition to another contractor for the Services, if applicable.

5. The City may pursue any remedies available at law or equity. Contractor shall be liable to the City for any loss or damage sustained by the City because of failure to perform in accordance with this Agreement.

6. The following provisions of this Agreement shall survive termination of this Agreement for any reason: I(D); I(F); II; III; IV; V; VI; IX; and X. The obligations of any surety under any bond provided pursuant to this Agreement will survive termination.

D. Contractor's Remedies for Breach.

1. Contractor may terminate this Agreement for non-payment of sums due under this Agreement except where non-payment is pursuant to the City's rights under this Agreement. Contractor will first provide the City written notice of Contractor's intent to terminate and allow the City thirty (30) days within which to make payment.

2. Notwithstanding any claim of a material breach by the City, Contractor shall not discontinue performance of the Services without the written consent of the City.

IV. INDEMNITY.

Contractor will be liable and responsible for any and all damages to persons or property caused by or arising out of the negligent or willful actions or omissions in the performance of the Services by Contractor,

its employees, agents, or other persons acting under Contractor's direction or control. Contractor will indemnify and hold harmless the City, as well as its elected and appointed officials, current and former officers and employees, servants, volunteers, agents, attorneys, representatives, insurance carriers, and self-insurance pools ("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 negligent, grossly negligent, willful and wanton, or intentional actions or omissions of or a failure to observe any applicable standard of care by Contractor and/or its employees, agents or representatives or other persons acting under Contractor's direction or control. Contractor will include the provisions of this Section in any such subcontracts engaged to perform any part of the Services. The provisions set forth in this Section will survive the completion of the Services and the satisfaction, expiration, or termination of this Agreement.

V. WAIVER OF CONSEQUENTIAL DAMAGES; SUBROGATION

Notwithstanding any provision of this Agreement that may be construed to the contrary, in no event shall the City, including its elected and appointed officials, current and former officers and employees, servants, agents, attorneys, representatives, insurance carriers, and self-insurance pools, be liable to the Contractor for any exemplary, punitive, special, indirect, consequential, remote, or speculative damages arising out of or relating to, in any manner, this Agreement; whether arising in contract, tort, or otherwise, even if Contractor has been informed of the possibility thereof. Moreover, to the extent any damages arising under this Agreement may be covered by insurance, the Contractor agrees to waive all rights of subrogation against the City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected and appointed officials, current and former officers and employees, servants, volunteers, agents, attorneys, representatives, insurance carriers, and self-insurance pools for losses arising from the Services performed by the Contractor for the City.

VI. INSURANCE

A. Required Policies. Contractor will procure and keep in force the following insurance subject to the conditions below, for the duration of this Agreement:

1. Commercial General Liability Insurance. Comprehensive general liability insurance insuring against any liability for personal injury, bodily injury, or death arising out of the performance of the Services with minimum combined single limits of One Million Dollars **(\$1,000,000.00)** for each occurrence and **Two Million Dollars (\$2,000,000.00)** general aggregate.

2. Products and Completed Operations Insurance. Products and completed operations insurance insuring against any liability for bodily injury or property damage caused by the completed Services, with a combined single limit of at least **One Million Dollars (\$1,000,000).**

3. Comprehensive Automobile Liability Insurance. Automobile Liability coverage with minimum combined single limits for bodily injury and property damage of not less than **One Million Dollars (\$1,000,000.00)** for any one occurrence with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in connection with performance of the Services. If Contractor's insurance does not cover non-owned or hired vehicles, the requirements of this paragraph shall be met with respect to each such vehicle used in connection with performance of the Service, and Contractor agrees to assure compliance prior to allowing the use of a vehicle not owned by Contractor for such purpose.

4. Professional Liability Insurance. If Contractor is an architect, engineer, surveyor, appraiser, physician, attorney, accountant, or other licensed professional, or if it is customary in the trade or

business in which Contractor is engaged, or if the City otherwise deems it necessary, errors and omissions professional liability insurance insuring Contractor against any professional liability with a limit of at least **One Million Dollars (\$1,000,000.00)** per claim and annual aggregate.

5. Other Insurance. Workers' compensation insurance (unless Contractor provides a completed Declaration of Independent Contractor Status Form) and other insurance required by applicable law.

6. Excess or Umbrella Requirements. For the coverages required in Sections VI(A)(1-4), Contractor shall provide umbrella or excess coverage written on a "follow-form" basis to the underlying policy and in a coverage amount not less than **One Million Dollars (\$1,000,000.00)**. In so doing, the coverage shall provide complete protection to the City consistent with the liability limits that may be imposed upon the City pursuant to C.R.S. § 24-10-114, as may be amended.

The limits of any insurance required by this Agreement will not limit Contractor's liability.

B. Terms of Insurance.

1. Additional Insured. Except for the professional liability policy, if applicable, and workers' compensation policy, **all required insurance policies shall name the City as an additional insured.** It will provide that the City, although named as an additional insured, will nevertheless be entitled to recovery under said policies for any loss occasioned to the City or its officers, employees, or agents by reason of the negligence of Contractor or its officers, employees, agents, subcontractors or business invitees. The insurance policies will be for the mutual and joint benefit and protection of Contractor and the City. **Such policies will be written as primary policies not contributing to and not in excess of coverages the City may carry.**

2. Qualification: Deductible. Insurance required by this Section will 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 **Ten Thousand Dollars (\$10,000.00)**, and Contractor will be responsible for the payment of any such deductible.

3. Cancellation. No such policies will be cancelable or subject to reduction in coverage limits or other modification unless previously approved by the City in writing.

4. Coverage Type. Contractor will identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Contractor changes to "occurrence," Contractor will carry a twelve (12) month tail. Contractor will not do or permit to be done anything that will invalidate the policies.

5. Pollution Coverage. The insurance required by this Agreement will 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 will not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. If necessary, Contractor will secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims, or suits with at least **Two Million Dollars (\$2,000,000)** each occurrence, subject to approval by the City, which approval will not be unreasonably withheld.

6. Evidence of Coverage. Before commencing work under this Agreement, Contractor will provide certificates of insurance policies and all necessary endorsements evidencing insurance coverage required by this Agreement. The City will not be obligated under this Agreement until Contractor provides acceptable such certificates of insurance and endorsements. If the Term extends

beyond the period of coverage for any required insurance, Contractor will, at least ten (10) days before the expiration of any such insurance coverage, provide the City with new certificates of insurance and endorsements evidencing either new or continuing coverage.

C. Subcontracts. Contractor will include the insurance requirements of this Agreement in all subcontracts. Contractor will be responsible if any subcontractor fails to procure and maintain insurance meeting the requirements of this Agreement.

VII. SALES AND USE TAX.

Unless specifically exempt, all materials provided and equipment used in the performance of Services within the City are subject to City Sales & Use Tax, including services performed on behalf of the City.

A. Contractor Responsible for Tax. Contractor is subject to the tax on all purchases, fabrication, manufacture, or other production of tangible personal property used, stored, or consumed in the performance of the Services.

B. Specific Industry Standard. The 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 and is available on the City's website at <http://www.c3gov.com/DocumentView.aspx?DID=115>.

C. Equipment. Prior to or on the date Contractor locates equipment within the City to fulfill this Agreement, Contractor will file a declaration describing each anticipated piece of equipment, the purchase price of 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-T of the Commerce City Sales & 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 will be allowed as a contract expense.

VIII. NOTICES.

Except for routine communications, written notices required under this Agreement and all other correspondence between the parties will be directed to the following and will be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

Office of the Chief of Police
Police Department
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

If to Contractor:

Jeremy Graves, General Manager
Allied Universal
12100 E. Iliff Avenue, Suite 350
Denver, CO 80014

The parties may agree to delivery of notices via electronic mail.

IX. INDEPENDENT CONTRACTOR.

A. Generally. **The relationship between Contractor and the City will be independent contractors, and neither the City nor Contractor will be deemed or constitute an employee, servant, agent, partner, or joint venturer of the other. Contractor is obligated to pay federal and state income tax on any money earned pursuant to this Agreement, and neither Contractor nor Contractor's employees, agents, or representatives are entitled to workers' compensation benefits, unemployment compensation benefits, sick and annual leave benefits, medical insurance, life insurance, or pension or retirement benefits from the City.**

B. Representations. Contractor shall make no representation that either it or any of its employees, agents, or representatives are employees of the City for any purposes.

C. No Authority to Bind the City. Contractor does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.

D. Control and Supervision. Contractor has and retains control of and supervision over the performance of Contractor's obligations hereunder and control over any persons employed by Contractor for performing the Services hereunder

E. Non-Exclusivity. Contractor represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.

F. Assumption of Risk. All Services are to be performed solely at the risk of Contractor, and Contractor shall take all precautions necessary for the proper and sole performance thereof.

G. Separate Operations. Contractor will not combine its business operations in any way with the City's business operations, and each party shall maintain their operations as separate and distinct.

X. GENERAL PROVISIONS.

A. No Assignment. Contractor will not assign or transfer any rights, interests, or obligations under this Agreement without the City's prior written consent.

B. Governing Law; Jurisdiction and Venue; Recovery of Costs. This Agreement will be governed by the laws of the State of Colorado without regard to its conflicts of laws provisions. For all claims arising out of or related to this Agreement, Contractor consents to the exclusive jurisdiction of and venue in the state courts in the County of Adams, State of Colorado. Contractor waives any exception to jurisdiction because of residence, including any right of removal based on diversity of citizenship. The prevailing party in any litigation to resolve a dispute between the parties arising from this Agreement will be entitled to recover from the non-prevailing party court costs, reasonable third party expenses, and reasonable attorney fees incurred in prosecuting or defending such action and enforcing any judgment, order, ruling or award. The prevailing party shall be determined based upon an assessment of which party's arguments or positions could reasonably be said to have prevailed over the other party's arguments or positions on major disputed issues at trial. Such assessment should include evaluation of the following: the amount of the net recovery, the primary issues disputed by the parties, whether the amount of the award comprises a significant percentage of the amount sought by the claimant, and the most recent settlement positions of the parties, which the parties agree shall be admissible for purposes of determining the prevailing party. Any obligation of the City to pay court costs or attorney fees pursuant to this Section shall be subject to the appropriation of funds by the City Council for such purpose.

C. Governmental Immunity. No term or condition of this Agreement will be construed or interpreted as an express or implied waiver 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. COVID-19 and Other Public Health Emergencies. While on City property, Contractor and any employees and subcontractors will comply with all public health orders and laws related to the COVID-19 public health emergency and any other public health emergency in the City, and all City directives relating to any public health emergency, including distancing, face coverings, employee screening, and sanitation. Contractor will not permit any employee who has tested positive for COVID-19, who is exhibiting symptoms of COVID-19, or who has exhibited symptoms within the prior ten days to be present at any City facility.

E. Protections for Data Privacy. Contractor shall implement and maintain reasonable security procedures and practices compliant with C.R.S. § 6-1-713.5(2)(a-b) and C.R.S. § 24-73-102(2)(a-b) with respect to any personal identifying information, as defined in C.R.S. § 6-1-713(2)(b) and C.R.S. § 24-73-101(4)(b), disclosed to Contractor in the course of performing the Services. Contractor will notify the City within twenty-four (24) hours of Contractor's determination that a security breach has occurred, as defined in C.R.S. § 6-1-716(1)(c) and C.R.S. § 24-73-103(1)(b), with regard to any personal information, as defined in C.R.S. § 6-1-716(1)(g) and C.R.S. § 24-73-103(1)(g), disclosed to Contractor in the course of performing the Services, and will conduct such investigation and provide such notice as required by law in the event of such breach.

F. Rights and Remedies. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted, for Services negligently or defectively performed.

G. Time of the Essence. Contractor acknowledges that time is of the essence in the performance of this Agreement. Contractor's failure to complete any of the Services during the Term, or as may be more specifically set forth in an exhibit, notice to proceed, change order, or any approved progress schedule, will be deemed a breach of this Agreement.

H. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement will be strictly reserved to the parties. Any person other than the City and Contractor will be deemed to be only an incidental beneficiary under this Agreement.

I. No Waiver. The waiver of any breach of a term of this Agreement, including the failure to insist on strict compliance or to enforce any right or remedy, will not be construed or deemed as a waiver of any subsequent breach of such term; any right to insist on strict compliance with any term; or any right to enforce any right or remedy with respect to that breach or any other prior, contemporaneous, or subsequent breach.

J. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or Contractor on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words, and words of any gender will include the neutral and other gender. Paragraph headings used in this Agreement are for convenience of reference and will in no way control or affect the meaning or interpretation of any provision of this Agreement.

K. Severability. A holding by a court of competent jurisdiction that any term of this Agreement is invalid or unenforceable will not invalidate or render unenforceable any other term of this Agreement.

L. Acknowledgement of Open Records Act. The City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and this Agreement and any related documents are subject to public disclosure. The City will take reasonable steps to keep confidential only documents actually prevented from disclosure under the Colorado Open Records Act (“CORA” or “Act”), C.R.S. § 24-72-201, *et seq.*, which efforts may include notifying the Contractor of a CORA request and allowing the Contractor to take steps to prevent disclosure, where and when it is reasonably possible to do so. **The Contractor will indemnify and hold the City harmless from any claims arising from the release or inadvertent disclosure of confidential or proprietary information and from any claims arising from the withholding, or release of documents not protected from disclosure under the Act.**

M. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement for the parties and to bind the parties to its terms. The signatories represent and warrant that each has legal authority to execute this Agreement for the party he or she represents and to bind that party to its terms.

N. Liability of City Representatives. All authorized representatives of the City are acting solely as agents and representatives of the City when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the City

O. Counterparts; Execution. This Agreement may be executed in any number of counterparts, each deemed to be an original, and, taken together, will constitute one and the same instrument. Signature pages may be executed via “wet” signature or electronic mark, and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology, or other similar electronic means.

P. Entire Agreement; Modification; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and, except as expressly provided, may not be modified or amended except by validly executed written agreement of the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement. This Agreement will be binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns.

[Remainder of this page intentionally left blank – signature page(s) follow(s).]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE CITY

Jason R. Rogers, City Manager

ATTEST:

APPROVED AS TO FORM:

Dylan A. Gibson, City Clerk

Ashley Lacher, Senior Assistant City Attorney

ALLIED UNIVERSAL

Jeremy Graves, General Manager

EXHIBIT A

Scope of Services

CONTRACTOR: Allied Universal

LOCATION(S) OF SERVICES: 7887 E. 60th Avenue
Commerce City, CO 80022

GENERAL DESCRIPTION OF SERVICES

Project Goals

Consultant will perform security services to assist the City in achieving general safety and security to all city-owned property, and when needed, provide special event, crime scene, and patient security.

General Project Requirements

Consultant will prepare and deliver the following:

The Contractor will provide armed, uniformed security officers (“AUSO”) defined as an employee of the Contractor who has a firearm and is certified to carry said firearm, along with being physically capable of performing the services, and who has completed the appropriate training in the following areas: essential duties of private security personnel; legal authority of a security officer; procedures relating to notification of police in the event of criminal activity; report writing; radio use procedures specific to the City’s police department and the Adams County Communications Center; firearm safety; basic emergency first aid; courteous enforcement; and legal restrictions on arrest, restraint of persons, and use of force. All AUSOs shall receive an annual handgun qualification through the Peace Officer Standards and Training Board or the equivalent from the Contractor.

Contractor shall respond to emergency service requests within one hour of request and respond to non-emergency service requests as soon as possible or no later than the following day. Contractor shall be capable of responding to all service requests within the specified timelines.

All work shall be completed per applicable City standards and within the agreed-upon timeline.

Key Deliverables & Tasks

The tasks identified below shall conform to the City’s branding, formatting, and case project processing.

QUALIFICATIONS

1. Contractor’s Minimum Qualifications:

- a. Contractor shall regularly and continuously provide armed security officer services for the last five years, as verified through references submitted within the bid response.
- b. Contractor shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this bid.
- c. Contractor must be able to fully staff and deploy qualified personnel to City facilities in an organized and efficient manner on the contract start date. To provide the most efficient

services to the City, to the greatest extent feasible, armed security guards shall be assigned to the Commerce City Civic Center site for a period of at least 30 days before rotating.

- d. In case of an emergency or unusual event, all Contractor employees shall be subject to the direction of the Chief of Police or his designee through the Point of Contact (POC) for the police department and/or first available City Management on-site.

2. Personnel Qualifications:

Due to the high visibility of the armed security officer position, the City requires high stability in the security forces posted.

- a. All armed security officers assigned to City facilities must pass and maintain a criminal background check to the satisfaction of the City of Commerce City.
 - i. It is the Contractor's responsibility to conduct a thorough criminal background check on all armed security guards assigned to any City facility to ensure that no guard has a criminal record.
 - ii. A copy of the written verification that the armed security officer has passed the Contractor's background checks must be provided to the City of Commerce City Point of Contact prior to assignment at the facility.
- b. Prior to submitting replacement staff, Contractor shall provide City with a copy of the written verification that the replacement armed security officer has passed the Contractor's background checks.
- c. The City has the right to decline the Contractor's placement of armed security officers whom the City may deem unsuitable for the assignment. The Contractor agrees that staff placements will be mutually acceptable to the City and the Contractor.

If an armed security officer cannot perform his/her duties during a shift due to illness, injury, or other reasons, the Contractor shall provide a replacement armed security officer within one hour from the time the post is vacated.

SERVICES.

1. General Services. In all assignments, the Contractor shall provide the following general services to the City:

- Prevention of violence, including controlling, subduing, disarming, or apprehending persons threatening violence.
- Prevention of vandalism.
- Prevention and detection of theft, loss, fire, and safety hazards.
- Protection of City equipment and other items or documents.
- Regulation of the flow of public movement.
- Assisting Police Officers on an as-needed basis.
- Performance of other related work as assigned by the designated City staff.
- Document and complete required logs and incident report forms as needed.
- Cooperate with police action and reporting requirements, including submitting detailed statements and accurate testimony associated with initiated police activity.

2. General Facility Services. When providing security services in any City building, Contractor shall provide the following services to the City:

- Detection and control of weapons and contraband.
- Enforcement of rules, regulations, and policies related to crime reduction, court or city operations, including assistance with controlling prisoners or unruly citizens.

3. Security Services.

a. Civic Center Security. Contractor shall provide (1) AUSO each regular business day, generally from 8:00 a.m. to 5:00 p.m. Monday thru Friday, excluding city-recognized holidays, to provide general security for Civic Center and other civic events. Depending on the day and other scheduled events, the security officer's schedule may flex to accommodate events outside regular business hours. Contractor shall provide (1) AUSO from 5:00 p.m. to 11 p.m. to provide general security for all City Council meetings. Generally, regular City Council meetings are held every Monday evening. For those events that require an adjustment of the officer's regular schedule, the City shall provide notification to the Contractor not less than 48 hours prior to 8:00 a.m. of the day of the scheduled event. Contractor by entering into this contract agrees to provide services for the following Civic Center events:

- i. Court Security. The AUSO shall be present for every Municipal Court session held in the City Council Chambers at the Civic Center pursuant to the Commerce City Court Calendar. Generally, Municipal Court is held Wednesdays and Thursdays from 8:00 am to 5:00pm. The AUSO shall screen all entrants into the chamber for weapons, act as bailiff for the court, take individuals into custody or escort them from the courtroom as directed by the judge, and take all action reasonably necessary to ensure the safety of the public and City personnel. Courts may request that up to two (2) armed security officers be available for municipal court days.
- ii. Council Security. The AUSO shall be present during each regular business meeting of the City Council, held in the City Council Chambers at the Civic Center held every Monday of each month, beginning at 5:00 p.m. and continuing until all City Council members have left the City Council Chambers. The AUSO shall screen all entrants into the chamber for weapons and shall provide any other security-related service requested by the Mayor, a City Council Member, the City Manager, a Deputy City Manager, the City Attorney, or the Chief of Police while the security officer is on duty.
- iii. Administrative Hearing/Special Meeting Security. The AUSO may be requested to be present for administrative hearings or special meetings held by the City at the Civic Center for which the Contractor has received a request for services not less than 48 hours prior to the scheduled start of the hearing if that hearing occurs outside of the AUSO's regular schedule. If an administrative hearing is held in the jury room while the Municipal Court is in session, one (1) AUSO will cover both events unless the City requests additional AUSOs. The AUSO shall provide any security-related service requested by the hearing officer or city staff and shall take all action reasonably necessary to ensure the safety of the public and City personnel.

- b. Crime Scene Security. Contractor shall provide AUSOs and marked security vehicles in the number designated by the City when requested, not less than two (2) hours prior to the requested service. The AUSO(s) shall prevent unauthorized entry into any crime scene perimeter established by the City and shall perform any other duties assigned by the City's law enforcement personnel working the scene. This position may charge the city the on-call/overtime rate.
- c. Patient Security. Contractor shall provide AUSOs, in the number designated by the City, when requested not less than 2 hours prior to the requested service. The AUSO(s) shall prevent unauthorized access to the prisoner/patient, guard against escape, notify the City when discharge is imminent, and perform any other duty assigned by the command staff of the City police department. This position may charge the on-call/overtime rate.
- d. Event Security. Contractor shall provide AUSOs, in the number designated by the City, when requested not less than 48 hours prior to the event. The AUSO(s) shall prevent unauthorized access to the event or any other restricted area of the property and perform any other duty assigned by the command staff of the City police department. This position may charge the on-call/overtime rate.
- e. The parties may negotiate additional security services on an as-needed basis.
- f. Contractor will cover on-call duties as able with consideration to their staffing. Contract may subcontract those on-call duties if needed.

CERTIFICATION OF ARMED, UNIFORMED SECURITY OFFICERS:

Contractor shall certify that all armed, uniformed security officers assigned to perform services pursuant to this contract shall have the minimum physical capabilities including, but not limited to: walking, standing for extended periods of time, running, lifting up to fifty (50) pounds, exerting up to thirty-five (35) pounds of force, physically confronting and detaining an uncooperative person, communicating via telephone and two-way radio, and visually differentiating between colors and shades of colors.

SCHEDULE CHANGES. In the event the City must alter the dates or times for the performance of any services, the City shall provide 48 hours of advance notice to the Contractor.

Any changes to hours, the scope of work, qualifications, requirements, or equipment shall be mutually agreed to in writing by both parties and may necessitate a change in fee structure. In addition, the parties may negotiate annual rate increases.

REPORTS. Contractor shall prepare an Incident Report for any incident that occurs during Contractor's performance of the services. Copies of incident reports shall be provided to the City on a per-incident basis within 48 hours of the incident. Contractor may retain Incident Report copies at its discretion.

EMPLOYEE CONDUCT

Contractor's armed security officers and other agents or representatives of Contractor **shall not:**

- a. Lock or unlock public entrances outside duty hours unless authorized by the Chief of Police or his designee.
- b. Sit on desks, cabinets, tables, or rest feet on desktops or open desk drawers, etc.
- c. Possess or use illegal substances, alcohol, or marijuana. Security officers under the influence of alcohol, marijuana, or illicit drugs while on duty will be promptly dismissed, and the officer shall not be reassigned to any other City facility.
- d. Engage in excessive fraternizing with City staff, visitors, or clients. Excessive fraternizing disrupts and distracts security officers from their primary duties.
- e. Converse privately with acquaintances or personal visitors while on duty. Armed security officers shall utilize their breaks and lunch periods for such interactions.
- f. Read books, magazines, or newspapers while on duty.
- g. Occupy their personal vehicles while on duty. Armed security officers shall be on post for the entire duration of their shift, except for breaks and lunch.

Employee Conduct:

Contractor and all assigned staff members, including but not limited to security officers, supervisors, liaisons, and account managers, shall be held to the highest level of professionalism throughout the life of any contract.

- a. Proper conduct is expected of Contractor's personnel at all times. This includes adhering to no-smoking ordinances, the City's drug-free workplace policy, not using alcoholic beverages, and courteous treatment of employees, clients, and visitors.
- b. The City has the right to dismiss any Contractor's employee who does not, in the City's discretion, properly conduct himself/herself or perform quality work.
- c. Contractor and contractor's staff shall not use cameras, camera phones, computers, tablets, and/or comparable devices while on a post. Recordings of any kind, including photos, audio, and/or video, are strictly prohibited. City of Commerce City or any of its employees shall not be the subject posted on any social media sites.
- d. Refrain from using personal cell phones or other devices to take photos or recordings while on duty, at, or on City property. **Recordings of any kind (photo, audio, or video) and/or posting any recorded material on social media are strictly prohibited.**
- e. Limit telephone calls to business or personal emergencies.

City Oversight

A designated individual will be responsible for management of the contract for the City ("Project Manager"). The City will provide reasonable assistance to Contractor in scheduling meetings, interpretation

of policy and procedural requirements, research relating to internal documents, and coordination with outside agencies and City staff, but the City's obligation will not limit Contractor's obligations to perform the Services. The City will rely on the contractor's personnel, experience, and expertise to ensure all necessary components of the scope of work are completed.

Timeline and Budget

Contractor must complete all deliverables within the agreed-upon schedule and within the limits provided by the executed contract.

City Holidays

City Holidays include New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

Overtime

Billing for overtime is permitted only when a single security officer exceeds forty (40) hours during a single work week or when a single security officer exceeds twelve (12) consecutive hours during a single work day.

Safety

Contractor shall be responsible for all safety training, procedures, and requirements.

Contract Requirements

Contractor will perform all Services in accordance with the executed Professional Services Agreement.

WHEN: Contractor shall perform all Services to the satisfaction of the City for security services as requested by the City.

COST: Under no circumstances shall the compensation due and owing to the Contractor for the performance of the Services described herein exceed \$550,000 over the course of four (4) years if extended.

Service	Pay Rate	Bill Rates	Holiday/OT Bill Rates
Court, Administrative Hearings, City Council, Civic Center Armed Security Officer	\$25.00	\$40.00	\$60.00
Court, Administrative Hearings, City Council, Civic Center Second Armed Security Officer	\$37.50	N/A	\$60.00
Crime Scene Security Officer with Vehicle	\$37.50	\$60.00	\$60.00
Patient Security Officer	\$37.50	\$60.00	\$60.00
Event Security Officer	\$37.50	\$60.00	\$60.00
Additional Short Term Security Coverage	\$37.50	\$60.00	\$60.00

Year 1 Annual Cost Estimate not including holidays- \$100,000.00

Year 2 (if extended) Annual Cost Estimate not including holidays- \$134,000.00

Year 3 (if extended) Annual Cost Estimate not including holidays- \$134,000

Year 4 (if extended) Annual Cost Estimate not including holidays \$134,000