

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made and entered into effective this ____ day of _____, 2016 (the “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 (the “City”), and Atkins North America, Inc, a Florida corporation whose principal business address is 7604 Technology Way, Suite 400, Denver, Colorado (“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 Professional Engineering services as set forth in Exhibit A, attached and incorporated by reference (the “Services”). The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to Contractor.

B. Controlling Terms. The terms of this Agreement will control if the terms of any exhibit, attachment, or invoice conflict with this Agreement.

C. Deliverables.

1. Electronic 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.

2. Spatial Data. Deliverables including spatial data (GIS/AutoCad) will include geospatial datasets (those generated from GPS, survey data, or other derived geospatial data like orthography) in Environmental Systems Research Institute, Inc.’s (“ESRI”) file/personal geodatabase or shapefile format, including a coordinate system projection information or file. Point features will be generated as point shapefiles, linear features will be generated as line shapefiles, and area features will be generated as polygon shapefiles. Any geospatial dataset derived from new or existing geospatial data will be in file/personal geodatabase or shapefile format, along with an explanation of the method used to generate the derived geospatial data. Spatial Coordinate or Survey System will be documented and used, along with a coordinate system projection file for said data. Contractor will provide complete metadata (who, what, when, where, how) for all provided spatial data and related information.

3. 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.

D. Contractor Representations. 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 the Contractor's obligations and liabilities will not be diminished by reason of any approval or review by the City.

E. Prosecution of the Services. Contractor will perform all work in a professional and workmanlike manner and will furnish all labor, materials, tools, supplies, machinery, utilities, and other equipment that may be necessary for the 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. All work, if related to construction, will be performed in accordance with the City's Engineering Standards and Specifications

F. Correction of Errors. Contractor will correct any errors or omissions in its work and any work deemed unsatisfactory or unacceptable by the City promptly and for no additional compensation.

G. 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.

H. Licenses & Permits. 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.

I. Rate of Progress. Contractor will complete all Services to the City's satisfaction within twenty-six (26) months. 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.

J. 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.

K. Drugs, Alcohol and Workplace Violence; 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 and workplace violence. Policies will be made available to Contractor upon request. Contractor will comply with all applicable federal, state and local laws, ordinances and regulations.

L. 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 actually performed, in accordance with the rates set forth in Exhibit A, a sum not to exceed **\$986,240.00**. 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. 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, and the total amount that Contractor claims is due.

C. Representation. By submitting an invoice, Contractor represents 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 for 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.

E. Public Works Services. This paragraph applies if the Services involve construction, erection, repair, maintenance, or improvement of any public works (excluding professional services).

1. Any progress payments are payments on accounts and shall not be construed as acceptance by the City or any part of the work. All such progress payments, except for the final payment, shall be subject to correction on subsequent invoices after the discovery of any error. Approval of an invoice shall not foreclose the right of the City to examine Contractor's books and records of to determine the correctness and accuracy of any item.

2. At the time of delivery to Contractor of the final payment, Contractor shall execute and give to the City a final receipt for the same. The acceptance of final payment shall constitute a waiver of all claims by Contractor.

3. The City may withhold amounts from any payment as may be necessary to cover: (a) any liquidated damages; (b) claims for labor or materials furnished Contractor or any subcontractor or reasonable evidence indicating probable filing of such claims; (c) failure of the Contractor to make proper payment to subcontractors or suppliers; (d) evidence of damage to another contractor, utility, or private property; (e) uncorrected defective work or guarantees that have not been met; (f) reasonable evidence that the work will not be completed within the allowed time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or (g) any other amounts that the City is authorized to withhold. If the reason for withholding is removed, the City will make payment of the withheld sums with the next regular progress payment unless another basis for withholding exists. Execution of this Agreement by Contractor shall constitute a waiver by Contractor to claim any right of payment of interest upon any funds retained or withheld by the City pursuant to this Agreement or C.R.S. § 38-26-107.

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

G. Appropriation. This Agreement will neither constitute nor be deemed a multiple fiscal-year debt or financial obligation of the City based on the City's ability to terminate this Agreement. Contractor acknowledges that the City has made no promise to continue to budget funds beyond the current fiscal year and that the City has and will pledge adequate cash reserves on a fiscal-year by fiscal-year basis.

H. 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. The term of this Agreement will be from the Effective Date until June 29, 2018 ("Term"), unless the Term is extended in by validly executed written amendment.

B. Termination.

1. Generally. The City may terminate this Agreement without cause if the City determines that such termination is in the City's best interest. The City will effect such termination by giving written notice of termination to Contractor, specifying the effective date of termination, at least fourteen (14) calendar days prior to the effective date of termination.

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 ("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, 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 and no further notice will be required.

3. Effect of Termination. The City will be liable to pay Contractor for Services performed as of the effective date of termination, but will not be liable to Contractor for anticipated profits. Unless otherwise instructed in writing, Contractor will immediately discontinue performance of the Services upon receipt of a notice of termination.

C. 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 ten (10) days within which to make payment.

2. Pending resolution of any material breach by the City, Contractor may, in addition to any other remedies provided by law, discontinue performance of the Services without being in breach of this Agreement.

IV. INDEMNITY.

Contractor will be liable and responsible for any and all damages to persons or property to the extent caused by the negligent or willful actions or omissions in the performance of the Services by Contractor, its employees, designated agents, or other persons acting under Contractor's direction or control. Contractor will indemnify and hold harmless the City, its elected and appointed officials and its employees, designated agents and representatives (the "Indemnified Parties"), from any and all liability, damages, losses, judgments, costs or expenses, including, reasonable 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 Contractor and/or its employees, designated 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. 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 at least **One Million Dollars (\$1,000,000)** each occurrence.

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. Comprehensive automobile liability insurance insuring 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 site of all motor vehicles controlled by Contractor that are used in connection with performance of the Services, whether the motor vehicles are owned, non-owned or hired, with a combined single limit of at least **One Million Dollars (\$1,000,000)**.

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.

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** and 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. No "Pollution Exclusion." 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, as described in subsection ii(a), 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.

II. **BONDS.**

A. This paragraph applies if the Services involve construction, erection, repair, maintenance, or improvement of any public works (excluding professional services). If applicable, the requirements of this section may be waived or modified with the approval of the City Manager or the City's Risk Manager.

B. Before the commencement of any work, Contractor shall provide, at Contractor's sole cost, the City with a separate:

1. Performance bond in an amount equal to 100% of the amount of this Agreement as a guarantee of Contractor's faithful performance and completion of all undertakings, covenants, terms, conditions, warranties, and agreements of the Agreement; and

2. Payment bond in an amount equal to 100% of the amount of this Agreement, which bond shall conform to the requirements of C.R.S. § 38-26-101, et seq., as amended, as a guarantee of Contractor's prompt payment to all persons supplying labor and materials in the prosecution of the Services.

The bonds shall remain in effect until acceptance of the work performed under this Agreement. Contractor shall use the bond forms approved by the City.

C. Contractor and a surety shall execute the bonds. The surety shall be corporate bonding company acceptable to the City, licensed to transact such business in the State of Colorado, and listed in the U.S. Department of the Treasury Circular 570 in effect on the date of the Agreement. Evidence of authority of an attorney-in-fact acting for the surety shall be provided in the form of a certificate as to its power of attorney and to the effect that it is not terminated and remains in full force and effect on the rate of the bonds. If at any time a surety on any bond becomes irresponsible, is disqualified from doing business in the State of Colorado, or becomes insolvent or otherwise impaired, Contractor shall furnish bond(s) from an alternate surety acceptable to the City.

D. Contractor shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed amendment that increases the amount of this Agreement by ten percent (10%) or more, unless waived in writing by the City.

VI. 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 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.

VII. COMPLIANCE WITH C.R.S. § 8-17.5-102; VERIFICATION OF LAWFUL PRESENCE.

A. Certification. Contractor hereby certifies that, as of the date of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in the E-verify Program or Department Program as defined in C.R.S. § 8-17.5-101 in order to confirm the eligibility of all employees who are newly hired to perform work under this Agreement.

B. Pre-Employment Screening. Contractor is prohibited from using either the E-verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

C. Contractor Obligations. Contractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement or contract with a subcontractor that fails to certify to Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor will:

1. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
2. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph d the subcontractor does not stop employing or contracting with the illegal alien; provided, however, that Contractor will not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

D. Compliance with Investigation. Contractor will comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation undertaken by the Department pursuant to Article 17.5 of Title 8, C.R.S.

E. Violation. If Contractor violates this Section, the City may terminate this Agreement for breach of contract and Contractor will be liable for actual and consequential damages to the City.

F. Verification of Lawful Presence (C.R.S. § 24-76.5-103).

1. If Contractor is a natural person, including a sole proprietor with or without employees (*i.e.*, not a corporation, limited liability company, partnership or similar entity), and is 18 years of age or older, Contractor must: (a) complete the affidavit attached to this Agreement as **Exhibit B**; and (b) Attach a photocopy of the front and back of a valid form of identification noted on Exhibit B.

2. If Contractor executes the affidavit stating that he/she is an alien lawfully present in the United States, the City will verify his/her lawful presence through the federal systematic alien verification or entitlement program, known as the "SAVE Program," operated by the U.S.

Department of Homeland Security (“DHS”) or a successor program designated by DHS. If the City determines through the verification process that Contractor is an alien not lawfully present in the United States, the City will terminate this Agreement without further obligation to Contractor.

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:

Director
Public Works
City of Commerce City
8602 Rosemary Street
Commerce City, CO 80022

If to Contractor:

Tim Hammer, Vice President
Atkins North America, Inc.
7604 Technology Way, Suite 400
Denver, CO 80237

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

IX. GENERAL PROVISIONS.

A. Independent Contractor. The relationship between Contractor and the City will be as 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. No Assignment. Contractor will not assign or transfer any rights, interests, or obligations under this Agreement without the City’s prior written consent.

C. 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 court costs and reasonable attorney fees from the non-prevailing party.

D. 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.*

E. 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.

F. 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.

G. 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.

H. 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.

I. Acknowledgement of Open Records Act. Contractor acknowledges that 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.

J. 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.

K. 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.

L. 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

Brian K. McBroom, City Manager

ATTEST:

APPROVED AS TO FORM:

Laura J. Bauer, MMC, City Clerk

Robert Sheesley, Senior Assistant City Attorney

Recommended for approval:

Maria D'Andrea, Director
Public Works

Atkins North America, Inc.

Tim Hammer, Vice President
[must be notarized]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before more this _____, 2015,
by _____ (Name), _____ (Title),
of _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT A

SCOPE OF SERVICES

The Consultant shall provide personnel and resources to complete the following Services in a proactive, professional, thorough and precise manner, in accordance with the executed contract. Reference to “Consultant” and “CM” in this Scope of Services shall mean “Contractor” as defined in the Agreement of Professional Services, Atkins North America, Inc. References to “Contractor” in this Scope of Services shall mean Construction Contractor

A. GENERAL REQUIREMENTS

This Work requires providing the necessary personnel and resources to perform professional and technical project administrative, inspection and management duties by overseeing a contracted construction project for the City. The team identified for this Work shall remain the same for the duration of the Project unless approved by the City.

At a minimum, the CM’s team shall include a Consultant Professional Engineer, a Consultant Project Engineer and a Project Inspector to perform duties as described in the 2014 CDOT Construction Manual (revised on July 13, 2015). Other team members and/or subconsultants may be proposed by the CM to address structural and other specialty inspections requirements.

The Consultant Professional Engineer shall be a Professional Engineer registered in the State of Colorado and have a minimum of 7 years of previous experience in road and bridge construction management. The Consultant Project Engineer and Project Inspector/Tester shall have a minimum of 5 years of previous experience in roadway construction management.

All team members shall establish and maintain an effective working relationship with the Construction Contractor and other stakeholder groups including the City, SACWSD, utility companies, and affected property owners. The Consultant Professional Engineer will report to the City’s Project Manager

It is incumbent upon the CM to anticipate that the Construction Contractor, in coordination with the City and CM Staff, may elect to construct portions of this project during overnight and/or weekend hours. The Contractor may also elect to work multiple shifts. The CM will be expected to provide adequate construction oversight and inspection during these non-standard working hour periods.

B. PROJECT MANAGEMENT

- Understand and coordinate the execution of the Project plans, specifications and contractual obligations to assure general conformance
- Prepare agendas, coordinate and lead weekly construction progress meetings with the Construction Contractor, City, utilities, and other agencies/stakeholders as appropriate

- Complete weekly progress meeting minutes and distribute the minutes to meeting participants within two days.
- Prepare agendas and lead meetings for various phases of construction, such as a pre-paving and pre-striping meeting
- Review the initial Construction schedule and ensuing monthly updates for completeness, timely progress, delays and conflicts
- Document, review, and make recommendations for approval or rejection to the City regarding any change order requests and change orders
- Negotiate changes and costs with the Construction Contractor
- Review and make recommendations to the City regarding pay requests with updated schedule including verification of quantities of work performed
- Review and prepare a written response to RFIs and Shop Drawings including coordination with the Project Designer as needed
- Create visual documentation of project progress through routine and event-specific digital photographs
- Coordinate work activities with other consultants or City staff, including but not limited to materials sampling, field observation and testing
- Complete contract documentation as required per the direction of the City staff
- Participate in dispute resolution and the contract claim process
- Recommend Substantial Completion and Final Acceptance
- Complete Project closeout including delivery of all Project documentation to the City
- Coordinate with the City's Communications Division and the Construction Contractor's Public Relations sub-consultant to deliver timely and accurate information to the public

C. INSPECTION, QUALITY ASSURANCE, AND COORDINATION

- Perform construction observation and inspection, in accordance with appropriate CDOT policies and procedures, through full-time representation on the project site to ensure general compliance with plans and specifications, as well as proper documentation of: earthwork, roadway subgrade and paving, flatwork, pipelines, utilities, bridgework, traffic controls, signal work, drainage and storm water management
- Coordinate with the City, SACWSD, utility companies, and affected property owners to oversee their respective areas of responsibility and address any concerns or issues in a proactive manner
- Maintain project documentation of daily diaries, inspections, time counts, and weather days
- Coordinate and oversee the activities of the City's quality assurance materials testing consultant in accordance with the CDOT Field Materials manual, and oversee of Contractor's quality control testing
- Review, comment and respond to Construction Contractor's product submittals, mix designs, material certifications, test results and/or shop drawings, including false work and shoring.
- Ensure the existence and correctness of all project records including:
 - Original books, records and documentation for pay quantities
 - Alignment, benchmark, ROW, and other necessary survey data
 - Section and property ties
 - Scale tickets

- “As Constructed” plans and shop drawings
- Geotechnical test results
- Review and approve traffic control plans and related methods of handling traffic through affected construction zones
- Review and make recommendations to the City regarding the Construction Contractor’s project storm water management plan
- Inspect and accept temporary and permanent erosion and sediment control facilities installed and maintained by the Construction Contractor as part of the project storm water management plan
- Prepare inspection & observation reports, review field tests & survey cut sheets and integrate all QA/QC documentation reports
- Resolve field conflicts in a proactive manner
- Maintain a set of field plans and notes to assist in the creation a final set of record drawings upon completion of the Project
- Complete warranty inspections

D. CONTRACT MANAGEMENT

- Administer the construction contract according to established City and CDOT Policies and Procedures including all supplemental Design, Construction, and Policy Bulletins
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- Ensure conformance with applicable City policies and procedures
- Manage the Project within the current approved construction budget
- Ensure Contract Time is managed in a way that benefits the Project

E. ADDITIONAL PROJECT REQUIREMENTS

- Provide transportation for CM staff to and from the Project and use of a field vehicle fitted with appropriate flashing traffic warning devices
- Provide equipment necessary for completing work functions of field inspection, measurements, documentation, record keeping, communications and personal safety
- The Construction Contractor will provide a Class 2 field office for the use of the CM. The field office shall be equipped with such office equipment as is described in the Construction Bid Documents.

F. BID PHASE SERVICES, DELIVERABLES, AND SUBMITTAL REQUIREMENTS

- Review Project Bid Documents and make recommendations to the City regarding Project constructability, schedule, and phasing activities.
 - Submit a report to the City discussing the constructability of the Project and suggested changes for incorporation prior to completion of Project Bid Documents
 - Submit a report to the City discussing the feasibility of the project schedule as prepared by the Project Designer, proposed phasing of the project and suggested changes for constructability and potential cost savings
- Assist the City in evaluating Construction Contractor bid packages
- Prepare Agendas for the Pre-bid and Pre-Construction Meetings

G. CONSTRUCTION SERVICES, DELIVERABLES, & SUBMITTAL REQUIREMENTS

- Conduct the Pre-Bid and Pre-Construction Meetings
- Coordinate and conduct videotaping and photographing of pre-construction site conditions
- Evaluate, review and submit a report to the City regarding the Construction Contractor's construction and material quality control plans
- Coordinate the preparation and submittal of a report detailing the Project quality assurance and material testing plan
 - Submit regular reports detailing the reported results from both Construction Contractor quality control and Consultant quality assurance testing efforts
- Prepare agendas and conduct weekly progress meetings with Construction Contractor, City, and appropriate stakeholders
 - Prepare and distribute weekly progress meeting minutes
- Prepare agendas and conduct meetings for required events such as the pre-paving and pre-striping meetings throughout the project timeline
- Document, review, and submit written recommendation to the City regarding pay requests including verification of quantities of work performed and an evaluation of updated progress schedule
- Document, review and submit written recommendation to the City regarding Construction Contractor change order requests, including negotiation details with the Construction Contractor
- Submit a weekly Project Change Log summarizing all potential, active and finalized Construction Contractor change order requests
- Submit a weekly log detailing submissions and responses to Construction Contractor Requests For Information
- Submit a weekly log detailing responses to Construction Contractor Product Submittals and Shop Drawings
- Submit a monthly photo log and folder of photos containing routine project progress and event-specific digital photographs
- Submit a written report recommending Substantial Completion and Final Acceptance of the Project
- Submit project closeout documentation to City for approval.
- Coordinate with the Project Designer in the preparation final Record Drawings upon Substantial Completion of the Project. It is the responsibility of the Project Designer to complete the Record Drawings.