

**2022 ROW Landscape Maintenance
2022-01-PKS**

November 3, 2021

REQUEST FOR PROPOSALS



**City of Commerce City, Colorado
Public Works**

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1. INVITATION

The City of Commerce City (“City”) is soliciting proposals from qualified vendors (“Respondents”) to provide **RIGHT OF WAY (ROW) LANDSCAPE MAINTENANCE for calendar year 2022**, as described in this Request for Proposals (“RFP”) and more specifically detailed in Attachment B, “Detailed Scope of Services.” The selected Respondent is expected to provide programmatic and on-call ROW landscape maintenance, including irrigation monitoring and repairs, as more fully detailed in the Scope of Services section of this RFP (“Services”). The Respondent

This RFP provides a general description of services anticipated, submittal requirements, outlines selection criteria and the selection process. A response to this RFP (“Proposal”) should serve as a complete approach to providing the services. Joint submittals are encouraged to ensure the ability to provide all services requested in this scope. Any proposed subcontractors/team members must be identified and their roles clearly defined in the Proposal.

The City intends to execute a contract with an anticipated notice to proceed date of December 20, 2021 with the selected Respondent (“Contractor”) on a non-exclusive basis for a **one-year Initial Term**, running from January 1, 2022 to December 31, 2022. **The City may, at the City’s sole discretion, decide to extend the Agreement for a one-year Renewal Term at the same rates as the Initial Term**, which would run from January 1, 2023 to December 31, 2023. Any selected Respondent will be expected to enter into a Master Services Agreement (Attachment A) with the City consistent with the terms of this RFP.

Submission requirements and deadlines are detailed in Sections 5 through 8 of this RFP:

- Questions regarding RFP requirements must be received by **Steve White, Parks and Streets Project and Program Coordinator** in writing at swhite@c3gov.com by **5:00 PM MT on Friday, November 12, 2021**.
- **Proposals must be received by 12:00 p.m. MT, on Tuesday, November 23, 2021.**

The City reserves the right to modify this RFP or the selection process, to cancel this RFP, to reject or accept any Proposal, and to waive any informalities or irregularities in any Proposal, without liability, at any time.

2. SELECTION SCHEDULE/KEY DATES

The solicitation and selection process includes the following steps and schedule:

Publication and distribution of RFP:	Wednesday, November 03, 2021
Question submission deadline:	Friday, November 12, 2021 (5:00 p.m. MT)
Responses to questions posted (anticipated):	Wednesday, November 17, 2021
Proposal submission deadline:	Tuesday, November 23, 2021, (12:00 p.m. MT)
Review period (anticipated):	2 week(s)
Interviews (if any) (anticipated):	Week of December 6, 2021
Selection (anticipated):	Friday, December 10, 2021
Respondent submits insurance and other required documentation:	Within ten (10) calendar days of Notice of Intent to Award
Execute contract (anticipated):	Monday, December 20, 2021

The City reserves the right to modify this schedule as needed. Date for responses to questions and dates after the submission deadline are anticipated dates; modifications of those will not be posted.

3. COMMERCE CITY INFORMATION

Community Context

The City of Commerce City, Colorado is located in the rapidly growing Denver-metro area, just eight miles northeast of Denver in Adams County. The city is surrounded by the communities of Brighton, Denver, Aurora, and Thornton, several wildlife parks (Barr Lake State Park to the north and the Rocky Mountain Arsenal National Wildlife Refuge to the east), and the Denver International Airport (DIA). A key feature of the city is its location along major regional travel routes (roadways (I-76, I-270, and E-470), railways (Burlington Northern/Santa Fe and Union Pacific), and air (Denver International Airport)), which has helped to retain a strong industrial base for the city's economy.



About Commerce City

As one of the state's fastest growing cities, Commerce City is redefining itself for the next generation, building on historic values of community, industry, agriculture and family. Centrally located Colorado's bustling Front Range, Commerce City is a Quality Community for a Lifetime, with 25 miles of trails, a championship golf course, 840 acres of open space and parks, one of the country's largest soccer complexes and the nation's largest urban wildlife refuge. Learn more at www.c3gov.com.

4. GENERAL REQUIREMENTS

Project Goals

The selected Contractor will perform programmatic ROW Landscape Maintenance Services as set forth in more detail in Attachment B. When requested by the City, the Contractor shall also perform on-call, as-needed routine and emergency ROW Landscape Maintenance Services. The primary goal is for a professional, reliable Contractor to assist the City in achieving neat and attractive ROW landscapes.

General Project Requirements

The Contractor will provide all labor, tools, equipment, and materials to perform maintenance and repairs, emergency repairs, testing, and inspection of Right of Way Landscape Maintenance as described in Attachment B “Scope of Services,” and as may be directed by the City through work order or otherwise. The Contractor will coordinate with other City contractors as necessary. All work shall be made in a neat and workmanlike manner, in accordance with the best practices of the trade. All work shall comply in every respect with City and state regulations and laws as well as all applicable code requirements.

The Contractor shall also be responsible for ensuring necessary irrigation system inspections are scheduled and completed satisfactorily. Upon completion of the work, the Contractor shall conduct an operating test in the presence of the designated City representative and shall demonstrate that all equipment is operating properly.

In certain circumstances, materials needed to complete work may be supplied by the City. All parts and supplies and materials supplied by the contractor shall be approved by a City representative prior to use or installation. The Contractor shall submit cut sheets for all new equipment proposed. The Contractor will provide all necessary and requested documentation for any work performed.

A KMZ file (google maps/earth) is available for contractors submitting a proposal. The KMZ file delineates all ROW maintenance areas and has points locating all controllers. This file is available for review to provide accurate pricing for respondents and used throughout the agreement to aid the contractor in communicating repairs and maintenance items needed. KMZ file is available upon request.

Work Orders

Additional work outside of programmatic Services identified in Attachment B may be authorized on an ad hoc basis and will be initiated by City staff. If the value of the work is over \$500, City staff will initiate a Work Order. The Contractor shall provide an estimate of time and materials as well as an estimated schedule for completion upon evaluation and discussion with City staff. The Contractor shall only repair, replace, upgrade or install work that is directed by the City and identified in the Work Order. If there are any questions regarding the work to be performed, the Contractor is responsible for contacting the designated City representative and requesting clarification before proceeding.

On-Call Extra Services – Routine and Emergency

When requesting on-call Extra Services outside the Scope of the programmatic tasks identified in the agronomic calendars in Attachment B, the City will indicate to the Contractor whether the request is “emergency” or “routine.”

Emergency Service: The Contractor will be available “on call” on a 24-hour basis for any emergency that may occur, including holidays. Contractor will be expected to respond within no later than 24 hours for any emergency on-call request from the City.

Routine or non-emergent Extra Services: Response time to routine requests shall be as reasonably timely as possible, but shall not exceed 72 hours unless otherwise mutually agreed upon by the Parties.

No Minimum Service Requirements

Services shall be provided by the contractor on an as-needed, non-exclusive basis. The City does not represent that it will utilize any contractor’s services in any guaranteed amount. No minimum dollar amount or number of Work Orders are guaranteed by the City.

Project Site Cleanliness

The Contractor shall leave the work area in a clean state upon completion of the work at the end of each work day. The contractor must remove all debris generated and dispose of it in an appropriate manner.

City Oversight; Expertise and Reliance of Contractor

A designated individual will be responsible for management of the contract for the City (“Project Manager”). The City will rely on the personnel, experience, and expertise of Contractor to ensure all necessary components of the scope of work are completed.

Timeline and Budget

Contractor must complete all deliverables within the timeframes established by the Agronomic Calendar for programmatic Services and within the limits provided by the executed contract and/or Work Orders for Extra Services. Further, although the bulk of the Services performed under the executed contract will likely take place during the months of April through October, the Contractor shall be expected to maintain the same level of responsiveness and professionalism during the winter months, especially with respect to on-call service requests.

City Holidays

City Holidays currently include: New Year's Day; Martin Luther King Day; President's Day; Memorial Day; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day; Day After Thanksgiving; Christmas 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 Master Services Agreement. ***Please refer to Attachment A for all contract requirements, including insurance, indemnification, compensation, termination, and payment standards.***

5. PROPOSAL FORM

The Proposal must be typed or computer generated and submitted in the format described below. Proposals (not including examples of previous work) shall be no more than 20 pages (8.5" x 11") with a minimum font size of 11 point. Marketing materials are discouraged and will count toward the 20-page maximum. The City requests that only information relevant to the Proposal be included. Proposals that do not meet the mandatory requirements herein may be considered non-compliant and may be rejected.

Respondents may request parts of their Proposals to remain confidential and must indicate such in the Proposals and on the appropriate proprietary or financial pages; provided, under no circumstances may an entire Proposal be marked or identified as proprietary. **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 Respondent of a CORA request and allowing the Respondent to take steps to prevent disclosure, where and when it is reasonably possible to do so. **By submitting a Proposal, each Respondent releases the City from any claim of damage or loss arising from the release of confidential or proprietary information not clearly designated as such by a Respondent, from the City's disclosure of such information following the City's prior notification to the Respondent, and from any claims arising from the release of documents not protected from disclosure under the Act.**

Proposals shall include the following items in the order listed:

- A. **Cover Letter:** A cover letter introducing the Respondent, indicating the Respondent's interest in the contract, and identifying the entity or entities submitting the Proposal. The letter identify the name, address, email address, and telephone number of the person to contact, along with other contact information for those authorized to represent the Respondent. The letter should also include:
 - A signature by a representative of the Respondent authorized to bind the Respondent for the terms proposed.
 - Any criteria expected by the City that Respondent will not provide, or deadlines, obligations, or requirements that the Respondent may not be able to comply with, including alterations, if applicable.
 - Any proposed changes to the draft Professional Services Agreement (Attachment A).
 - Any other information not appropriately contained in the body of the Proposal.
- B. **Cost Proposal:** All Respondents must complete Attachment C – Bid Form. The Bid Form must include:
 - **Proposal.** A total not-to-exceed fixed fee for labor, equipment, time, materials, and other items necessary to meet the requirements of the Scope of Services and

deliverables, including the requirements of the Professional Services Agreement. The fee should include all costs of performing the Services (including without limitation, mileage, travel, equipment, supplies, subcontractor costs, permits, licenses, overhead, profit, insurance, etc.) Although the City does not anticipate compensating Respondent for any additional items of expenses, any such additional amounts to be charged to the City must be identified in the cost proposal. Final pricing terms will be negotiated as part of the agreement following selection.

- **Detailed Cost Breakdown.** A cost and hourly rate for various job classifications for each task identified in the Scope of Services and the deliverables section of this RFP including an estimate of manpower hours needed to complete the work. All cost assumptions must be clearly documented in this portion of the submittal. A budget for direct expenses, including travel expenses, if any, must be included, but such expenses are not expected to be paid separately. All prices shall be firm and not subject to increase during the period of this contract.
- **Extra Services Rates.** Insert all-inclusive hourly rates for the tasks/items identified as “Extra Services” in the Bid Form. In the event that the City requests Services outside the scope of the programmatic Services set forth in Attachment B, the selected Contractor’s compensation for the Extra Services will be determined by those rates, which shall remain fixed for the entirety of the Term. If the Respondent wishes to propose different categories of Extra Services rates for any reason (e.g., for emergent versus non-emergent requests; off season versus peak season, etc.), those must be clearly identified in the Proposal.
- **Proposed Payment Schedule.** A proposed payment schedule based on pre-established monthly installments outlined in Attachment C – Bid Form. The City anticipates a 12-month billing structure for programmatic Services, running from January through December, but is open to consideration of other billing arrangements, so long as all rates proposed are all-inclusive and supported by a detailed accounting for their basis. All Extra Services should be invoiced separately and not included in any invoice for programmatic Services.

C. **Statement of Qualifications and References.** All Respondents must completely and accurately fill out Attachment D to this RFP, “Statement of Qualifications and References.”

6. SELECTION & INTERVIEW PROCESS

The City will use a qualitative-based selection process to award the contract, where cost is one of several factors considered. Selection, if any, will be based on the Proposal deemed to be the best value to the City at the City's sole discretion using the following criteria:

- Qualifications of Respondent's staff.
- Respondent's past experience, including reputation for timely, quality performance.
- Rates.
- Ability to provide 24-hour "on call" emergency service and timelines for response.

The City may also consider the fact that a Respondent is located within the City.

All Proposals will be reviewed and evaluated by the Selection Committee, which may include staff members of various City departments. The City reserves the right to request clarification or additional information from individual Respondents. The City may also consult additional resources for subject matter, expertise, and reference. By submitting a Proposal, Respondent authorizes the City to undertake such investigation as may be necessary to a verify Respondent's qualifications and reputation. Respondents will execute releases as requested by the City to enable the City to obtain necessary information.

As part of the evaluation process, the City expects to interview some, but not necessarily all, of the Respondents. If selected for an interview, presentations will be limited in time with additional time for questions. Respondents may also be asked to supplement their submittals.

In addition to the criteria stated above, the City may consider without limitation, a Respondent's financial resources, ability to comply with all legal and regulatory requirements, ability to perform the work and complete all work on time, history of performance, reputation ability to obtain necessary equipment, data, and facilities, and any other factor deemed important by the City, including location within the City. The City may select multiple Respondents to provide Services as needed by the City. Contracts involving expenditures exceeding \$250,000 are subject to approval by the City Council; those exceeding \$75,000 are subject to approval by the City Manager; those up to \$75,000 are subject to approval by a department director.

The City will enter into a negotiation with the selected Respondent(s) regarding fees and Scope of Services. If an agreement cannot be reached with the chosen Respondent(s), the City may initiate negotiations with other Respondent(s). This process may continue until an agreement is reached with a Respondent(s). If the chosen Respondent(s) do not execute a contract within a specific deadline, the City reserves the right to award the contract to other Respondent(s).

The successful Respondent(s) shall commence work only after execution of an acceptable contract and direction from the City to proceed. The Respondent(s) must submit insurance documentation, a completed W-9, and additional documentation as requested by the City before the execution of any contract.

7. MISCELLANEOUS

A. NO COMMITMENT BY THE CITY. This RFP does not commit the City to award any contract, to pay any costs associated with this RFP, including the preparation or submission of a Proposal, interviews, supplemental Proposals or the negotiation of a contract, or to procure or contract for any services. The decisions of the City with respect to this RFP are final and without recourse to any Respondent. In acceptance of Proposals, the City reserves the right to negotiate further with one or more Respondents in the best interest of the City.

B. CHANGES TO RFP. Revisions to this RFP will be made through addenda published and made available to all Respondents on the City's website and on the Rocky Mountain E-Purchasing System (RMEPS). Any other communication, spoken and written, formal and informal, received by any representative of any Respondent from sources other than official addendum shall not be effective to vary any term of the RFP.

C. SUBSTANTIVE PROPOSALS. By submitting a Proposal, a Respondents certifies that: (a) the Proposal is genuine and is not made in the interest of, or on behalf of and undisclosed person, firm, or corporation; (b) the Respondent has not directly or indirectly induced or solicited any other Respondents to put in a false Proposal; (c) the Respondent has not solicited or induced any other person, firm, or corporation to refrain or abstain from proposing a Proposal; and (d) the Respondent has not sought by collusion to obtain for themselves any advantage over any other Respondents.

D. RESERVATION OF RIGHTS. The City reserves the right to reject any or all Proposals, in its sole discretion. The City reserves the right to modify this RFP or the selection process, to cancel this RFP, and to waive any informalities or irregularities in any Proposal or in the selection process, without liability, at any time.

E. REQUIRED DOCUMENTS. The selection of any Respondent, and the award of any contract, is dependent on the completion of the Professional Services Agreement, the receipt of the required Certificate of Insurance and applicable endorsements, and the City's receipt of a completed Certificate of Compliance from the successful Respondent.

F. PROPERTY OF CITY. All Proposals shall become the property of the City, will not be returned, and will become a public record.

G. CONDUCT. Respondents are cautioned not to undertake any activities or actions to promote or advertise their submittals, other than discussions with City staff as described in this RFP. After the release of this RFP, Respondents are not permitted to make any direct or indirect contact with members the City Council, City staff, or media on the subject of this RFP, except in the course of City-sponsored presentations. Violation of these rules is grounds for disqualification of the Respondent.

H. DEBARMENT. Respondents will be qualified, and must disclose to the City, if the Respondent or any of its principals are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any Federal department or agency.

H. CONTRACT TERMS. By submitting a Proposal, each Respondent confirms that it has reviewed and accepts the terms and conditions of Attachment A subject to explicit revisions identified in the Respondent's Proposal. No proposed changes shall be deemed accepted by the City unless explicitly incorporated into the agreement.

8. METHOD OF SUBMITTAL

Each Respondent must submit a complete Proposal including all information requested in this RFP. Proposals that do not meet RFP requirements may be considered non-compliant and rejected.

Questions regarding this RFP must be received in writing via email no later than 5:00 PM MT on, Friday, November 12, 2021. Responses to questions will be on the City's website and on the RMEPS as an addendum to the RFP. Questions must be submitted to:

Steve White, Parks & Streets Program & Project Coordinator
swhite@c3gov.com

Proposals must be received prior to 12:00 p.m. MT, Tuesday, November 23, 2021. Proposals shall be submitted via e-mail titled "Proposal for 2022 Commerce City ROW Landscape Maintenance RFP".

Steve White, Parks & Streets Program & Project Coordinator
swhite@c3gov.com

It is the sole responsibility of each Respondent to ensure its Proposal is received by the City by the date and time stated in this RFP. Proposals not received by the deadline will be considered late and not accepted.

9. DRAFT CONTRACT

The contract between a selected Respondent(s) and the City will be substantially in the form of the draft contract contained in Attachment A. Respondents must review the draft contract and identify any proposed changes as “Proposed Changes to the Contract” in the Proposal. The City may consider any proposed changes in selecting a Respondent and awarding the contract but may reject the Proposals and condition the award of the contract on acceptance of a contract without the proposed changes.

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (“Agreement”) is made and entered into effective this _____ day of _____, 202____ (“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 [Insert Contractor's full legal name in all caps (e.g., "SMITH LANDSCAPING, INC.")], a [Insert Contractor's home state (e.g., "Colorado;" Delaware," etc.)] Select Entity Type whose principal business address is [Insert Contractor's principal business address (e.g., "452 Front Street, Boulder, CO 80303")] (“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, on a non-exclusive, as-needed basis, Contractor will provide programmatic and as-needed, on-call right-of-way maintenance services as set forth in Exhibit A – “Scope of Services,” attached and incorporated by reference, and pursuant to Work Orders, as defined below, if applicable (“Services”). Contractor shall completely and promptly execute and perform all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in Exhibit A, and any validly executed Work Orders. The terms and conditions of this Agreement shall apply to the performance of all Services under this Agreement, whether performed with or without a Work Order and notwithstanding the failure of any Work Order to incorporate this Agreement by reference. Contractor acknowledges that this Agreement does not grant any exclusive privilege or right to supply the Services to the City.

1. Work Order Services. A “Work Order” is an order agreed to by the City and Contractor to determine specific Services to be performed (including scope of Services, schedule, and total price) before the performance of Services. Work Orders may be in the form of Exhibit B but must include a specific reference to this Agreement. Work Orders must be authorized and executed as follows: (a) Division Manager (up to \$10,000.00); (b) Department Director (\$10,000.00 - \$74,999.99); and (c) City Manager (\$75,000.00 and above).

2. Invoiced Services. Contractor may perform Services without a Work Order if the scope of Services, rates, and total amount to be billed to the City for such Services are authorized and agreed to by the City before the performance of such Services. Services to be performed without a Work Order must be authorized as follows: (a) Division Manager (up to \$10,000.00); (b) Department Director (\$10,000.00 - \$74,999.99); and (c) City Manager (\$75,000.00 and above).

B. Changes to Scope of Services. A change in the Scope of Services, any Work Order, or invoiced Service shall not be effective unless expressly authorized by an employee of the City with the requisite authority to do so. If Contractor proceeds without such formal 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, Work Order, proposal, quote, invoice, terms and conditions sheet, or other like or related document conflict with this Agreement. Additional terms and conditions not specifically relating to the Services (such as unnegotiated or form terms included in any related exhibit, attachment, Work Order, proposal, quote, invoice, terms and conditions sheet, or other related or like document, regardless of title), 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.

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 or any Work Order, 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 a "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. 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.

F. Warranties. Contractor warrants that it is fully qualified to assume the responsibilities and render the Services described herein. Contractor further warrants that all work performed under this Agreement will be free from defects in workmanship, equipment, and materials. Upon acceptance of the work, Contractor will transfer the benefit of any applicable manufacturer's warranty to the City.

G. Prosecution of the Services. Contractor shall perform all work in a professional, workmanlike, and timely manner. Contractor shall monitor, supervise, and otherwise control and be solely responsible for all persons or entities performing work on its behalf, which shall be performed and supervised by competent, reliable, and qualified personnel. The Services performed by Contractor shall be performed in accordance with the generally accepted level of competency presently maintained by others in the same or similar type of work in the applicable community. 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.

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

I. 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.

J. 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.

K. Rate of Progress. 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, any Work Order, or as otherwise directed by the City, 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.

L. 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.

M. 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.

N. 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 and as may be set forth in Work Orders or invoices, provided such amounts set forth in any Work Order or invoice have been previously agreed to by the City pursuant to this Agreement. The

compensation established by any Work Order or invoice shall include 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. Maximum Amount. The total amount of compensation paid for Services performed under this Agreement shall not exceed a maximum aggregate amount of \$250,000.00 (including all years and any Services performed under this Agreement), unless this Agreement is approved by the City Council of the City.

C. Invoices.

1. Submission. Contractor will submit invoices for all Services performed pursuant to a Work Order on a monthly basis and will submit invoices for Services performed without a Work Order promptly upon the completion of such Services. Invoices shall be submitted to the department or division that authorized the performance of Services for which the invoice is submitted, with a copy to the department or division that procured this Agreement.

2. Content. All invoices shall be in a format approved by the City and shall indicate that Services were performed under this Agreement. All invoices shall identify the specific Services performed for which payment is requested, including a description of the Services, the applicable rates, hours worked by each employee, the applicable Work Order, if any, any costs for which Contractor seeks reimbursement, and the total amount that Contractor claims is due. Contractor will provide verification documentation as requested by the City.

3. 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 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. 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, 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.

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 kind of 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 kind of 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. The term of this Agreement will be from the Effective Date until December 31, 2022 ("Term"), unless the Term is extended by validly executed written amendment.

A. Termination

1. For Convenience. Contractor agrees that the City may terminate this Agreement without cause at any time for 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 work or portion of the work. Once Contractor has commenced 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, any Work Order, or otherwise directed by the City;
- 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 is 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, Contractor expressly agrees that the City will be liable only for Services or portions of Services that were: 1) actually requested by the City, and 2) 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 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, Contractor expressly agrees and assumes the risks that 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. Further, 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, cost 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; X; XI. 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 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** 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. 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 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. 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 a worker without authorization 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 a worker without authorization 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 a worker without authorization to perform work under this Agreement. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, 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 a worker without authorization; 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 worker without authorization; 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 a worker without authorization.

D. Compliance with Investigation. Contractor will comply with any reasonable request by the Colorado Department of Labor and Employment (“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.

IX. 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:

City Contact/Title
Select Department
City of Commerce City
Address
Commerce City, CO 80022

If to Contractor:

Contractor Contact/Title
Contractor Name
Contractor Address
Contractor City, ST ZIP

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

X. INDEPENDENT CONTRACTOR.

A. Generally. 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. 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.

XI. GENERAL PROVISIONS.

A. Incorporation by Reference. Exhibit A to this Agreement and any Work Orders or invoices agreed to by the City are incorporated into this Agreement by reference.

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 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 fairly 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.

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. 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 10 days, to be present at any City facility.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.**

N. 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.

O. 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

P. 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.

Q. 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.

Attachment A to RFP - ***Do not sign and return with Proposal***

EXHIBIT A

Scope of Services; Rates

[FINAL SCOPE OF SERVICES AND EXHIBITS TO BE COMPLETED LATER, BASED ON RFP SCOPE (PARTICULARLY ATTACHMENT B), THE CONTENTS OF THE CHOSEN RESPONDENT'S PROPOSAL, AND SUBSEQUENT NEGOTIATIONS BETWEEN THE PARTIES, ONCE CONTRACTOR IS SELECTED]

EXHIBIT B – SAMPLE WORK ORDER

WORK ORDER

This Work Order and any exhibit or attachment are subject to and incorporates all terms and conditions of the Master Services Agreement dated [Click here to enter a date](#).

Contractor shall perform the following Services:

-
-
-
-
- Cost: \$ Total Cost or Rate for Work Order
- Completion Date: [Click here to enter a date or type number of days](#)

Contractor shall obtain approval from Name prior to any changes in scope.

CONTRACTOR NAME

CITY OF COMMERCE CITY

Name, Title

Name, Title Based on Amount
Select Department

Date: _____

Date: _____

Recommended for approval:

Name, Title Based on Amount
Select Department

EXHIBIT C

[USE THIS FORM ONLY IF CONTRACTOR IS AN INDIVIDUAL/SOLE PROPRIETOR WITHOUT EMPLOYEES AND DELETE THIS INSTRUCTION!! IF CONTRACTOR IS A PARTNERSHIP, LLC, CORPORATION OR INDIVIDUAL/SOLE PROPRIETOR WITH EMPLOYEES, DELETE THIS EXHIBIT ENTIRELY]

AFFIDAVIT PURSUANT TO C.R.S. § 24-76.5-103

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

I am a United States citizen, or

I am a Permanent Resident of the United States, or

I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that Colorado state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute § 18-8-503, and it will constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

Date

INTERNAL USE ONLY

Valid forms of identification:

---current Colorado driver's license, minor driver's license, probationary driver's license, commercial driver's license, restricted driver's license, or instruction permit

---current Colorado identification card

---U.S. military card or dependent identification card

---U.S. Coast Guard merchant mariner card

---Native American tribal document



7887 East 60th Avenue
Commerce City, Colorado
80022
Phone (303) 289-3627
Fax (303) 289-3661

EQUIPMENT DECLARATION

Company: _____

Date: _____

Address: _____

State and Zip: _____

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

The tax on Declared Equipment will be calculated using the following method: **The original purchase price of the equipment will be multiplied by a fraction, the numerator of which is one (1) and the denominator which is twelve (12); and the result will be multiplied by four and one-half percent (4.5%) to determine the amount of Use Tax payable to the City.** Example: thirty (30) days or less = $\frac{1}{12}$ x purchase price of the equipment x 4.5%.

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

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

Construction Equipment Declared:

Description of Equipment and/or VIN number: _____

Purchase price of above equipment and date purchased: _____

Date equipment will enter the City: _____

Date equipment will be removed from the City: _____