

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into effective this ____ day of _____, 2024 (“Effective Date”), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado (“City”), and ECS IMAGING, INC., a California corporation registered to conduct business in the State of Colorado, whose principal business address is 5905 Brockton Ave, Ste. C Riverside, California 92506 (“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 Cloud access, licenses and support for the Laserfiche Cloud Document Management Solution. Contractor will also provide one-time Configuration, Consulting, Project Management and training related to the implementation of the Laserfiche Cloud Document Management Solution as set forth in **Exhibit A** – “Scope of Services,” software licenses, hardware and support set forth in **Exhibit B**, and Support Services set forth in **Exhibit C**, all of which exhibits are attached and incorporated by reference (“Services”). Contractor will provide Services in compliance with **Exhibit D**, Service Level Agreement. the software licenses described in Exhibit B, Quotes and Fees, and the Support Services, set forth in Exhibit C. All Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services. The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to Contractor without penalty. Contractor acknowledges that this Agreement does not grant any exclusive privilege or right to supply the Services to the City.

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

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

D. Contractor Representations; Standard of Care. Contractor represents that it has the requisite authority, capacity, experience and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws. Contractor acknowledges that the City is relying on Contractor’s expertise, skill, and knowledge, and that Contractor’s obligations and liabilities will not be diminished by reason of any approval or review by the City. Contractor represents that the Services provided: (i) will be performed in accordance with the applicable professional standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and

under the same or similar conditions faced by Contractor, and (ii) will be performed in a timely manner as required by the Agreement and performed and supervised by qualified personnel. Contractor further represents that all application software developed or implemented by Contractor under this Agreement, when used in accordance with its associated documentation, shall not infringe upon the rights or marks of a third party. Lastly, Contractor represents that it is not a party to nor subject to any agreement or order which would limit, prevent or restrict its performance of any Services.

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

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, for no additional compensation, and without limiting any other express or implied remedies of the City.

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 & 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.

I. Time for Completion. Contractor shall complete all Services to the City's satisfaction by no later than [Insert deadline date for the Contractor's completion of all Services in bold lettering (e.g., "February 31, 2022")]. Further, Contractor shall fully perform, complete, or present all identified tasks, sub-tasks, and Deliverable items by the deadline(s) established in the Scope of Services, as applicable. Contractor's rate of progress is a material term of this Agreement. At the City's request, Contractor will provide a progress schedule for the performance of any Services subject to the City's approval.

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, 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.

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 B**, a sum not to exceed the amounts the City has budgeted and appropriated for this Agreement, including all years and any Services performed under this Agreement, unless this Agreement is approved by the City Council of the City.. The compensation established by this Agreement includes all of Contractor's costs and expenses to fully perform the Services and other obligations of this Agreement, for the Term, as defined below. The City shall not be obligated to pay any late fees or interest. The City will not consider or be obligated to pay or reimburse Contractor any other charges or fees and Contractor will not be entitled to any additional compensation or reimbursement.

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

C. Representation. By submitting an invoice, Contractor warrants that: (i) the work covered by previous invoices is free and clear of liens, claims, security interests or encumbrances, except for any interest created by retainage; and (ii) 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. Warranties. The Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards for the software consulting industry. Contractor will use reasonable commercial efforts to complete the Services in accordance with this Agreement. If the Services fail to comply with this warranty during the "Warranty Period," which is the thirty (30) day period following completion of the Services, the City will promptly notify Contractor in writing specifying in reasonable detail any alleged non-conformities in the Services. Upon receipt of notice and a determination that the Services did fail to comply with this warranty, Contractor will, as City's sole and exclusive remedy, promptly re-perform any such Services in accordance with this Agreement. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING OR COURSE OF PERFORMANCE. CONTRACTOR DOES NOT WARRANT THAT PRODUCTS OR SERVICES WILL MEET CITY'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

E. 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.

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. 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.

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 and shall continue for a term of one (1) year from the Effective Date. The Agreement will extend automatically up to four (4) consecutive one (1) years terms so long as the annual quote conforms to **Exhibit B**. Under no circumstances will the term of this Agreement extend beyond five (5) years from the effective date. The City may terminate this Agreement at the expiration of any term by providing written notice of its intent to not extend the Agreement ninety (90) days prior to the expiration of the then-current term.

B. 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 Services or portion of the Services. 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.

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

- a) The Contractor fails or refuses to expeditiously and actively undertake or substantially or timely perform its responsibilities and obligations, or fails or refuses to make adequate progress in performing its responsibilities and obligations under this Agreement, including those stated in the Scope of Services;
- b) There is substantial evidence that it has been or will be impossible for the Contractor to perform the Services required due to matters within the Contractor’s control such as voluntary bankruptcy, strikes, boycotts, and labor disputes involving the Contractor’s employees or closure or suspension of operations by regulatory order of a governmental entity or an order of a court due to violations or infractions by the Contractor or the Contractor’s employees;
- c) The Contractor has submitted requests for payment under this Agreement that are fraudulent or persistently or flagrantly erroneous or misleading;
- d) The Contractor has made an assignment or transfer of, or subcontracts, any or all of its responsibilities and obligations under this Agreement in violation of the terms of this Agreement;
- e) The Contractor fails to obtain, renew, replace, or maintain the insurance coverage required by this Agreement, or causes or is at fault for damage to property or injury to persons that 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.
4. For Non-Appropriation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any Work Order, sub-agreement, attachment, schedule, or exhibit thereto, by the City.

C. Effect of Termination.

1. For termination pursuant to either Section III(B)(1) or (2), above, the City will be liable only for Services Contractor performed that were actually requested by the City and completed to the City's satisfaction up to the date of the effective date of termination.
2. For termination pursuant to Section III(B)(3), above, the City will be liable only for Services that Contractor performed that were actually requested by the City and completed to the City's satisfaction up to the date of the effective date of termination, to the extent that the budget for the year of such termination provided sufficient funds to discharge such obligation.
3. Following termination for any reason, under no circumstances will the City be liable for any costs related to Services not performed to the satisfaction of the City, any Services not requested by the City, or any Services that the City directed the Contractor to not perform. The City will not be liable to Contractor for any unperformed Services, anticipated profits, overhead, mobilization or demobilization costs, administrative costs, productivity costs, losses on disposal of equipment or materials, 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.

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.

- A. Contractor will be liable and responsible for any and all damages from any claim or suit by a third party due to personal/bodily injury or death, or damage to tangible property caused by 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.

- B. Intellectual Property Indemnification. Contractor will defend City from and against all losses, liabilities, damages and expenses arising from any claim or suit by a third party unaffiliated with either party to this Agreement (“Claims”) and shall pay all losses, damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable expenses (collectively, “Losses,” and including reasonable attorneys’ fees and court costs), to the extent arising out of any Claims that Contractor’s products and Services infringe a valid U.S. copyright or U.S. patent issued as of the date of this Agreement. In the event of such a Claim, if Contractor determines that this Agreement is likely affected, or if the solution is determined in a final, nonappealable judgment by a court of competent jurisdiction, to infringe a valid U.S. copyright or U.S. patent, Contractor will, in its discretion: (i) replace the affected Contractor products and Services; (ii) modify the affected Contractor products and Services to render it non-infringing; or (iii) terminate this Agreement with respect to the affected solution and refund to City any prepaid fees for the then-remaining or unexpired portion of the Agreement term. Notwithstanding the foregoing, Contractor will have no obligation to indemnify, defend, or hold City harmless from any Claim to the extent it is based upon: (i) a modification to any solution by City (or by anyone under City’s direction or control or using logins or passwords assigned to City); (ii) a modification made by Contractor pursuant to City’s required instructions or specifications or in reliance on materials or information provide by City; or (iii) City’s use (or use by anyone under City’s direction or control or using logins or passwords assigned to City) of any Contractor products and Services other than in accordance with this Agreement. This Section sets forth City’s sole and exclusive remedy, and Contractor’s entire liability, for any Claim that Contractor products and Services or any other materials provided by Contractor violate or infringe upon the rights of any third party.
- C. With regard to any Claim subject to indemnification pursuant to this Section: (i) the City shall promptly notify the Contractor upon becoming aware of the Claim; (ii) the Contractor shall promptly assume sole defense and control of such Claim upon becoming aware thereof; and (iii) the City shall reasonably cooperate with the Contractor regarding such Claim. Nevertheless, the City may reasonably participate in such defense, at its expense, with counsel of its choice, but shall not settle any such Claim without the Contractor’s prior written consent. The Contractor shall not settle or compromise any Claim in any manner that imposes any obligations upon the City without the prior written consent of the City.

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. 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:

Tiffany Chacon
Information Technology
City of Commerce City
7887 E 60th Ave.
Commerce City, CO 80022

If to Contractor:

Laura Favreau
ECS Imaging, Inc.
5905 Brockton Ave., Suite C
Riverside, CA 92506

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

IX. INDEPENDENT CONTRACTOR.

A. Generally. **The relationship between Contractor and the City will be 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.

X. LICENSING/PERMITTED USE

A. Intellectual Property Ownership. The contractor and its licensors own all IP Rights in the products. City and its authorized users have no right, title or interest in the products other than the license rights expressly granted herein. All rights not expressly granted in the products are reserved by the contractor or its licensors.

B. License to Products. The Contractor hereby grants City a non-exclusive, non-transferable license to access and use the products identified in **Exhibit B** during the term set forth therein.

XI. GENERAL PROVISIONS.

A. Incorporation by Reference. All Exhibits attached to this Agreement 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 to -120.

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), (h) and C.R.S. § 24-73-103(1)(b), (h) 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. Acknowledgement of Open Records Act. The City is a public entity subject to the Colorado Open Records Act, ("CORA" or "Act") C.R.S. § 24-72-201 to -205.5, 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, C.R.S. § 24-72-201 -205.5, which efforts may include notifying the Contractor of a CORA request and allowing the Contractor to take steps to prevent disclosure, where and when it is reasonably possible to do so. **The Contractor will indemnify and hold the City harmless from any claims arising from the release or inadvertent disclosure of confidential or proprietary information, and from any claims arising from the withholding, or release of documents not protected from disclosure under the Act.**

M. Accessibility.

1. Contractor will comply with and the Services provided under this Agreement will be in compliance with all applicable provisions of §§ 24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability (“Accessibility Standards”), as established by the State of Colorado Office of Information and Technology (“OIT”) pursuant to § 24-85-103(2.5) C.R.S. Contractor will also comply with all State of Colorado technology standards related to technology accessibility with Level AA of the most current version of the Web Content Accessibility Guidelines (“WCAG”), incorporated in the State of Colorado technology standards.
2. The City may require the Contractor’s compliance to the State of Colorado’s Accessibility Standards to be determined by a third-party selected by the City to attest to the Contractor’s Services complying with §§ 24-85-101, et seq., C.R.S., and the Accessibility Standards established by OIT.
3. The Contractor will indemnify and hold harmless the City, its elected officials, officers, employees, and agents (“Indemnified Parties”) against all costs, expenses, claims, damages, liabilities, court awards, and other amounts (including reasonable attorney’s fees and related costs) incurred by any of the Indemnified Parties in relation to the Contractor’s failure to comply with §§ 24-85-101, et seq. C.R.S. or the Accessibility Standards established by OIT.

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. 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.

Q. 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.

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

S. 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.

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

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

CITY OF COMMERCE CITY

Jason Rogers,, City Manager

ATTEST:

APPROVED AS TO FORM:

Dylan A. Gibson, City Clerk

Deanne Durfee, Deputy City Attorney

ECS IMAGING, INC.

Signature

Printed Name, Title

EXHIBIT A

Scope of Services