

AGREEMENT FOR CONSTRUCTION CONTRACT

THIS AGREEMENT FOR CONSTRUCTION CONTRACT (the "Agreement") is made and entered into effective this ____ day of _____, 2015 (the "Effective Date"), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado (the "City"), and CONTRACTOR LEGAL NAME, a home state Select Entity Type whose principal business address is Contractor principal business address ("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. Project.

A. Project. Contractor shall commence and complete the 2015 MILL AND OVERLAY, PROJECT NO. PM 2015-04 ("Project"), in accordance with the Contract Documents, and shall execute the entire scope of Work set forth in the Contract Documents, as defined below. Contractor shall, at its own expense, do all Work in a professional and workmanlike manner and furnish all labor, materials, tools, supplies, machinery, utilities and other equipment that may be necessary for the completion of the Project, as outlined in the Contract Documents.

B. Commencement and Completion of the Project. Contractor understands and agrees that all Work required under this Contract shall be fully completed, as set forth in the Contract Documents, by _____, **2015**. Contractor acknowledges and understands that it is an essential term of this Contract that Contractor maintain a rate of progress in the Work that will result in completion of the Project in accordance with the Contract Documents, and to that end, Contractor agrees to proceed with all due diligence to complete the Work in a timely manner in accordance with the Contract Documents.

C. Contract Documents; Priority. The term "Contract Documents" includes the following, each and all of which are a part thereof and have the same force and effect as if spread at length herein. The following documents are attached and incorporated into this Agreement by reference. In resolving inconsistencies among two or more of the Contract Documents, precedence will be given in the same order as enumerated here.

1. Change Orders;
2. Notice to Proceed;
3. Agreement for Construction Contract;
4. The following Addenda, if any:

Number

Date

Pages

5. Special Conditions of the Contract:

Document	Title	Pages
6. General Conditions;		
7. The following Specifications;		

Section	Title
8. The following Drawings:	
Number	Title Date

9. Notice of Award;
10. Invitation to Bid;
11. Information and Instructions to Bidders;
12. Notice of Substantial Completion;
13. Notice of Construction Completion;
14. Proposal Forms, including Bid Schedules;
15. Performance, and Labor and Material Payment Bonds;
16. Performance Guarantee; and
17. Insurance Certificates and Endorsements.

D. Contractor Representations. Contractor warrants and represents that it has the requisite authority, capacity, experience and expertise to perform the Work in compliance with the provisions of this Agreement and all applicable laws. Contractor acknowledges that the City is relying on Contractor's expertise, skill, and knowledge, and that the Contractor's obligations and liabilities will not be diminished by reason of any approval or review by the City.

E. Prosecution of the Work. Contractor will perform all Work in a professional and workmanlike manner and will furnish all labor, materials, tools, supplies, machinery, utilities, and other equipment that may be necessary for the completion of the Work. Contractor will monitor, supervise, and otherwise control and be solely responsible for all persons or entities performing work on its behalf.

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

II. COMPENSATION.

A. Amount. As compensation for performance of the Work described in the Contract Documents and any other obligations under this Agreement, the City will pay Contractor for work actually performed, in accordance with the rates set forth in the Contract Documents, a sum not to exceed **\$Numerical Dollars & Cents (if applicable; otherwise, modify accordingly**, subject to Change Orders executed in accordance with the Contract Documents. The compensation established by this Agreement includes all of Contractor's costs and expenses to fully perform the Project and other obligations of this Agreement. The City shall make payment(s) to Contractor in the manner and at such times as set forth in the General Conditions such amounts as are required by the Contract

Documents. The Contract Price is provisional based on the quantities contained in the Contract Documents. 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. 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.

III. SALES AND USE TAX.

Unless specifically exempt, all materials provided and equipment used in the performance of Work 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 Work.

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.

IV. 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

V. GENERAL PROVISIONS.

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

B. No 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.

C. 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.

D. Acknowledgement of Open Records Act. Contractor acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and this Agreement and any related documents are subject to public disclosure.

E. 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.

F. Counterparts. 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.

G. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement. 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.

[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

Name, Title Based on Amount

ATTEST:

APPROVED AS TO FORM:

Laura J. Bauer, MMC, City Clerk

Robert Sheesley, Senior Assistant City Attorney

Recommended for approval:

Name, Title

CONTRACTOR NAME

Name, Title

[must be notarized]

STATE OF COLORADO)
) ss.
COUNTY OF _____)

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

Witness my hand and official seal.

My commission expires:_____.

Notary Public



7887 East 60th Avenue
Commerce City, Colorado 80022
Phone (303) 289-3627
Fax (303) 289-3661
www.c3gov.com

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 = $\frac{1}{12} \times$ purchase price of the equipment \times 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: _____