



# **Request for Proposals for Pool Dehumidification System Replacement for the Eagle Point Recreation Center**

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

**Date: October 15, 2021**

## **1. REQUEST FOR PROPOSALS**

The City of Commerce City (“City”) seeks proposals for the design and installation of a replacement for the existing pool dehumidification system serving the lap pool at the Eagle Point Recreation Center (“Services” or “Project”), on a non- exclusive basis, as set forth in this Request for Proposals (“RFP”).

**The anticipated project start date is September 6, 2022**

**The required end date of the project is October 4, 2022**

**Questions regarding RFP requirements must be received by David Bebak, Fleet and Facilities Manager in writing at [dbebak@c3gov.com](mailto:dbebak@c3gov.com) by 4:00 PM MT on Monday, October 25, 2021.** Oral and late questions will not receive responses.

**MANDATORY On-Site Meeting will be held on Thursday, October 21, 2021 11:00 AM at**

**Eagle Point Recreation Center  
6060 Parkway Drive, Commerce City, CO 80022**

Responses to questions/posting of addenda will be posted online by 4 p.m. (MT) Monday, November 1, 2021.

**Proposals containing the information required by this RFP, in the format described below, must be received no later than 1:00 p.m. (MT) on Thursday, November 4, 2021. Proposals shall be submitted in a sealed envelope and plainly marked “Proposal for Pool Dehumidification System Replacement for the Eagle Point Recreation Center” on the outside of the sealed envelope.** Proposals must be submitted to:

David Bebak, Fleet and Facilities Manager  
City of Commerce City  
8602 Rosemary Street  
Commerce City, CO 80022

Public Bid Opening will occur at the address above at 1:00 p.m. (MT) on Tuesday, November 2, 2021

Request for Proposals  
Pool Dehumidification Unit Replacement for the Eagle Point Recreation Center  
City of Commerce City

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. Late Proposals will not be accepted.

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.

**SELECTION SCHEDULE /KEY DATES**

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

Publication and distribution of RFP:	Friday, October 15, 2021
Onsite pre-bid walkthrough	Thursday, October 21, 2021
Question submission deadline:	Monday, October 25, 2021 (4:00 p.m. MT)
Responses to questions posted (anticipated):	Monday, November 01, 2021
Proposal submission deadline:	Thursday, November 04, 2021 (1:00 p.m. MT)
Review period (anticipated):	2 week(s)
Interviews (if any) (anticipated):	Week of November 8, 2021
Selection (anticipated):	Tuesday, November 16, 2021
Respondent submits insurance and other required documentation:	Within ten (10) calendar days of Notice of Intent to Award
Execute contract (anticipated):	Tuesday, November 30, 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.

## PROJECT SUMMARY

The Contractor shall perform all Services described in this section and all obligations set forth in the draft contract (Attachment A). More specifically, the Contractor will:

Install a new pool dehumidification system to meet the standards set forth in this RFP for the natatorium in which the lap pool exists.

The successful Contractor will be responsible for the following major elements utilizing a Design-Build project delivery strategy:

1. Insulation, re-roofing, water proofing of all roof penetrations. The current roof is a membrane, not covered by warranty.
2. Procurement of all equipment and materials.
3. Installation of all new equipment.
4. Integration of new equipment with the existing city controls system.
5. Pre-commissioning, commissioning, testing adjusting and balancing of the new system.
6. Warranty the complete installation for a period of 12 months following successful commissioning.

The Contractor will provide all labor, tools, equipment, and materials to perform the Services. The Contractor will coordinate with other City contractors as necessary.

The Contractor must dispose of all debris generated in an appropriate manner. The Contractor shall be responsible for all safety training, procedures and requirements.

While on City property, Contractor and any employees and subcontractors will comply with all public health orders related to the COVID-19 public health emergency and all City directives relating to distancing, face coverings, employee screening, and sanitation. Contractor will not permit any employee who has tested positive for COVID-19 or who is exhibiting symptoms of COVID-19, or who has exhibited symptoms within the prior 10 days, to be present at any City facility.

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## 2. **OVERVIEW OF SCOPE OF WORK**

The selected Contractor will:

1. Develop the detailed design for the pool dehumidification system, as specified in this Scope of Work, including:
  - a. Mechanical Design
  - b. Structural Design
  - c. Electrical Design
  - d. Temperature Control System Design
  - e. Equipment specification
2. Facilitate design review meetings with City personnel and/or representatives, including project kickoff, 50%, 90% and final design review meetings.
3. Develop and maintain a Project schedule, including monthly updates provided to the City.
4. Apply for and obtain all required permits.
5. Furnish and install all new equipment and systems, including structural supports, mechanical installation, electrical installation, roof repair, and other required components for a complete and operable system, as specified in this Scope of Work.
6. Demolish and dispose of all existing equipment, structures, systems and components no longer in service as a result of the Project.
7. Perform on-site startup and commissioning of the new and upgraded systems.
8. Provide operator and maintenance training for the new and upgraded systems.
9. Submit certified NEBB and/or TABB testing adjusting and balancing (TAB) reports for City review.
10. Submit 2018 International Energy Conservation Code required commissioning reports.
11. Submit project record drawings, Factory Acceptance Testing (FAT) and Site Acceptance Testing (SAT) documentation and records where applicable, and operating and maintenance documentation for the new systems to the City.
12. Warranty all services and equipment provided as part of the project, for a minimum of one year following System Acceptance by the City.

### **3. FACILITY DESCRIPTION**

#### **4.1 Facility Location**

The Eagle Point Recreation Center is located at 6060 Parkway Dr, Commerce City, CO 80022. The facility contains two natatoriums: A recently added therapy pool, and the original lap pool. The natatorium with the original lap pool is the area served by the dehumidification system that must be replaced.

#### **4.2 Existing Dehumidification System**

The existing system to be replaced consists of two heat recovery units (HRU-1 & HRU-2)

HRU-1 – Model # Dectron RS-100-43; Serial #F2002010168

HRU-2 – Model # Dectron RS-100-43; Serial #F2002010167

One serves a below grade distribution system and the other a fabric duct distribution system. Two exhaust fans provide space pressure control. Please reference the:

Attachment B - Aquatics HVAC System Assessment Report dated April 10, 2020

Attachment C - Floor Plan

Attachment D - Roof Plan

Attachment E - 2019 Renovation and Addition PLBG As-Built

Attachment F - 2019 Renovation and Addition HVAC As-Built

**Respondents should plan on a full existing condition as-built effort for the affected systems, including but limited to; mechanical, electrical, structural and architectural.**

**Respondents will have the opportunity to review hard copies of available plans and/or as-builts during the pre-bid meeting.**

#### **4. POOL DEHUMIDIFICATION SYSTEM DESIGN REQUIREMENTS**

##### **5.1 Codes and Standards**

All design and installation shall be in accordance with the following regulatory codes and standards:

<b>Code</b>	<b>Title</b>
<b>AISC</b>	MANUAL OF STEEL CONSTRUCTION, 13 <sup>TH</sup> EDITION
<b>IBC</b> <b>And all Sub-Codes</b>	INTERNATIONAL BUILDING CODE, 2018 EDITION
<b>NFPA 37</b>	STANDARD FOR THE INSTALLATION AND USE OF STATIONARY COMBUSTION ENGINES AND GAS TURBINES
<b>NFPA 70</b>	NATIONAL ELECTRICAL CODE, 2017 EDITION
<b>NFPA 72</b>	NATIONAL FIRE ALARM CODE, 2019 EDITION
<b>NFPA 110</b>	STANDARD FOR EMERGENCY AND STANDBY POWER SYSTEMS
	STATE OF COLORADO AND LOCAL BUILDING CODES, SEE: <a href="https://www.c3gov.com/government/code-central">https://www.c3gov.com/government/code-central</a>

##### **5.2 General Design Requirements**

1. The pool dehumidification system replacement shall be designed to meet and exceed today's standards for natatorium design. Some of the airflow and pressure relationship standards required are indicated in the Mechanical Design requirements below. The system shall maintain space temperature, humidity and pressure during all ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) heating, cooling and dehumidification design days.
2. Electrical systems shall be as-built to the extent required to support the new mechanical system.
3. Structural systems shall be as-built to the extent required to support the new mechanical system.
4. Plumbing systems, including natural gas systems, shall be as-built to the extent required to support the new mechanical system.
5. Contractor shall develop a detailed design package for the replacement of the pool dehumidification system. All drawings shall be sealed by a professional engineer licensed in the state of Colorado. Drawings and documentation developed as a part of the detailed design package shall include:
  - a. Demolition drawings.
  - b. New work drawings.
  - c. Structural load calculations.
  - d. Plan and Section Views of new equipment locations
  - e. All related engineering calculations, QA/QC, and manufactured equipment

documentation

- f. Any and all other items required by referenced codes, standards and ordinances

### **5.3 Mechanical System Design**

1. Contractor shall be responsible for design of all mechanical systems required for a complete removal and replacement of the pool dehumidification system.
2. All drawings shall be sealed by a professional engineer licensed in the state of Colorado.
3. Contractor shall develop plan and section views of new equipment to be installed.

### **5.4 Structural Design**

1. Contractor shall be responsible for design of all equipment and device supports and foundations required for a complete installation of the new pool dehumidification system components.
2. All drawings and calculations shall be sealed by a professional engineer licensed in the state of Colorado.

### **5.5 Electrical System Design**

1. Contractor shall be responsible for design of all electrical systems required for a complete installation of the new pool dehumidification system.
2. All drawings shall be sealed by a professional engineer licensed in the state of Colorado.
3. Contractor shall be responsible for all component specifications.

### **5.6 Preliminary Dehumidification System Narrative**

#### **1. Design Criteria**

##### **a. Temperatures:**

- Summer Outdoor: 95°F db, 61°F wb
- Summer Indoor: 85°F
- Dehumidification Day Outdoor: 67°F db, 61°F wb
- Winter Outdoor: -10°F
- Winter Indoor: 85°F

##### **b. Humidity:**

- Specific dehumidification steps will be taken to assure a maximum of 55% RH.
- Dehumidification requirements shall be based on using outside air at the Dehumidification Day Outdoor conditions listed above.

c. Pressure Relationships:

- Natatorium-to-Adjacent Space
  - The natatorium shall be maintained at a negative differential pressure to an adjacent space which is generally controlled to either a positive or neutral pressure (Lobby).
  - This helps to ensure that humid, chlorine laden air is not transferred throughout the building.
  - Typical control point is -0.04" w.c.
- Natatorium-to-Ambient
  - The natatorium shall be maintained at a negative differential pressure to the outdoors.
  - This helps to ensure that humid, chlorine laden air is not pushed through the building envelope where it can condense and deteriorate the building components.
  - Natatorium space pressure sensor shall be located within 24" of the roof deck top combat stack effect during winter months.
  - Typical control point is -0.02" w.c.

d. Outside Air Ventilation:

- The natatorium shall be provided with a minimum of 1.5 air changes per hour (AC/HR) of ventilation air during all occupied hours.
  - Please note that this is in excess of the code minimum ventilation air flow rate requirements but is considered the City's standard for natatorium design. System designs with less ventilation air capabilities will not be acceptable.
- During unoccupied hours the ventilation flow rate can be reduced by up to 50% should indoor humidity levels allow.

## 2. Mechanical System Narrative General

a. Demolition scope:

- Remove HRU-1 & HRU-2.
- Remove the two exhaust fans serving the natatorium.
- Remove the existing fabric duct system.
- Remove all existing overhead metal duct.
- Remove the existing return grilles.
- Existing electrical does not need to be removed all the way to the panel however it needs to be terminated in a way that it does expose the wiring beyond the current configuration. Wiring that may become exposed will need to be terminated into appropriate terminating electrical junction boxes.
- In regard to wiring to the existing ceiling fans, the Contractor will remove the existing conduit to the nearest wall penetration but not all the way to the panel.



- In regard to the condensing unit piping, Contractor will remove to the nearest wall/roof penetration and terminate/cap as not to present a trip hazard or potential for moisture penetration.
- Abandoned conduit inside of electrical the panels shall be disconnected from designated breaker(s) labeled and pulled into the conduit or the panel.

b. New Pool Dehumidification System Requirements

Replace each HRU with a new unit in the same location. Unit splits will be similar to the following:

- HRU-1 – Replaced with PDU-2 @ 9,000 CFM supply.
- HRU-2 – Replaced with PDU-3 @ 18,000 CFM supply

General requirements are as follows:

- Packaged outdoor dehumidification unit with variable speed direct drive fans (supply and exhaust), aluminum air-to-air heat exchanger, gas fired stainless steel heat exchanger, sensible DX cooling coil with associated integral air cooled condensing unit utilizing digital scroll or variable speed compressors for capacity control.
- Unit construction shall be double wall foam injected panels with the interior walls being of all aluminum construction. All fasteners shall be stainless steel. Any component that is not aluminum or stainless steel shall be provided with a corrosion resistive coating.
- This unit will operate continuously to maintain the space relative humidity, space temperature and to maintain a negative space pressure relative to outside and relative to an adjacent space.
- All drain piping shall connect through the insulated curb and be piped to a suitable location within the building.
- Dehumidification will be accomplished using only outside air. The cooling coil is for space temperature control only. Varying amounts of outside air from 1.5 air changes per hour (AC/HR) up to 3.0 AC/HR will be supplied to the space as required to meet the relative humidity set point. This results in dehumidification control without the use of complex refrigerant based mechanical dehumidification systems and provides superior energy efficiency. A secondary benefit to this design is the increased ventilation air delivered to the space at all times. The result is an improvement in the indoor air quality for the natatorium environment.
- Return/Exhaust air will also be ducted to low intake louvers near the pool surface for removal of chloramines near the source.
- Airflow measuring shall be provided on supply, exhaust and outside air streams.
- Air flow capacities:
  - PDU-2
    - 9,000 CFM supply air 6.0 AC/HR
    - 2,300 CFM ventilation air min. 1.5 AC/HR
    - 4,500 CFM ventilation air max. 3.0 AC/HR
    - 5,400 CFM exhaust 20% more than max. ventilation.

- PDU-2
  - 18,000 CFM supply air 6.0 AC/HR
  - 4,500 CFM ventilation air min. 1.5 AC/HR
  - 9,000 CFM ventilation air max. 3.0 AC/HR
  - 10,800 CFM exhaust 20% more than max. ventilation.
- Base bid shall be Xetex (The therapy pool is currently served by an Xetex dehumidification unit. This will maintain equipment uniformity.).
  - Deduct alternate shall be Innovent or Venmar.
  - Should a respondent wish to propose a deduct alternate it shall be accompanied by a base bid proposal to compare values and help the City make an informed decision.

c. Ductwork

- Supply and return ductwork in the Natatorium shall be aluminum sheet metal with no liner.
- Ductwork shall be routed along the exterior walls. Supply shall be directed at exterior walls, the demising wall separating the two natatoriums (to provide air movement in the low ceiling area), at the roof structure, at the perimeter skylights and any other surfaces that are subject to condensation and/or corrosion.
- Air movement across the surface of the pool is intended to be handled by the HVLS fan. Directing supply air at the pool surface is discouraged.

d. Return Louvers

- The existing return grilles shall be removed. New, larger return louvers shall be provided in the existing return chases. Chase openings shall be increased to provide for a total airflow rate equal to the supply air plus 20% of the maximum ventilation air at a velocity through the louver of 650 FPM maximum.
- Louver shall be all aluminum with a custom 70% PVDF finish to match the wall color.
- Louver shall be a heavy duty aluminum construction with a blade and frame thickness of 0.125”.

e. High Volume Low Speed (HVLS) Fan

- Provide an HVLS fan with a direct drive variable speed motor above the lap pool.
  - By reducing stratification, this fan will reduce heating energy consumption and increase comfort.
  - The fan will also help remove chloramines from the pool surface. Fan shall be designed to provide as close to a 30 foot per minute airflow rate across the surface of the pool.
  - Location of Breaker panel for the HVLS will be designed by the Contractor, it's not designed yet and this is part of design task.

f. Temperature Controls

- The new pool dehumidification unit shall be provided with packaged controllers with a BACnet MS/TP interface.

- Provide the PDU with an LCD readout at the unit mounted controller and a remote user terminal to be placed within the guard room.
  - Provide a full graphics package at the existing building systems front end.
  - ENERGY SERVICES OF COLORADO (ESCO) of Westminster Colorado is only temperature controls contractor allowed. ESCO's scope shall include, but not be limited to, BAS interface to the units, wiring, pressure sensor locations, remote user terminal locations, graphics on the city's front end, alarms, etc... Interface requirements shall be coordinated by the successful team.
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## **5. DESIGN-BUILD CONTRACTOR DETAILED DESCRIPTION OF SERVICES**

### **6.1 General**

Contractor shall be responsible for: design, procurement, surveying, planning, scheduling, estimating, expediting, inspection, quality assurance, quality control, management, administration, supervision, labor, construction, calibration, pressure testing, NDT, checking, flushing, pre-commissioning, start-up, and training services, as required for successful project execution and completion.

### **6.2 Project Management**

Contractor shall be responsible for all project management, including but not limited to; labor, planning, logistics, scheduling and execution required to design, procure, construct and commissioning the new pool dehumidification system.

Contractor shall provide any and all assistance and representation required by the City in reviewing the development and progress of the work with the City, its insurance underwriters, consultants, and governing authorities.

### **6.3 Engineering Design**

Contractor shall develop a complete detailed design package for the new pool dehumidification system. All drawings shall be sealed by a professional engineer licensed in the state of Colorado. See Section 5 above for design requirements and drawings/documentation to be developed as a part of the Project.

### **6.4 Permitting**

Contractor shall be responsible for requesting and obtaining all necessary project permitting, including but not limited to:

1. Building and Electrical permits, as required by local authorities
2. Air/Environmental permits, if required
3. Participation in site meetings with City officials, if required
4. Revisions to existing site emergency and fire protection plans, as required

### **6.5 Procurement**

1. Contractor shall be responsible for the procurement of all equipment, materials, supplies, and consumable items required for completion of this project, including but not limited to: pool dehumidification units, ductwork, terminal devices, controls, structural steel, wiring, conduit, breakers, disconnects and alarm system components.
2. Engineered equipment and assemblies shall be subject to review and approval by the City.
3. Long lead materials shall be ordered immediately upon City approval.
4. Contractor shall provide all required thermal and acoustic insulation systems, including materials and installation, for new equipment, as required.

5. Contractor shall provide all electrical, grounding, cathodic protection, instrumentation, control, alarm, monitoring, and recording systems associated with new equipment.
6. Contractor shall provide all required, fixed personnel protection and safety systems including, but not limited to, handrails, platforms, kick plates, safety fences, rotating equipment guards, hazard barriers, thermal and electrical insulation meeting OSHA standards, where required, for all new equipment.
7. Contractor shall provide software licenses for all new control system components, as applicable.
8. Supply, deliver to the site, store, and protect all spare parts (if any).
9. Contractor shall provide any and all freight, handling, loading, unloading, and storage requirements in accordance with manufacturer recommendations and as required by the City, its insurance underwriters, consultants, and governing authorities.
10. Contractor shall clean and provide protection for all applicable scope items and equipment to be installed. Protection shall include, but not be limited to, rust inhibitors, physical barriers, packaging, temporary enclosures, and temporary bracing.

## **6.6 Construction**

Contractor shall be responsible for the following:

1. Design, siting, fabrication, installation, inspection and testing of Contractor work shall be in accordance with City requirements, and all applicable codes and standards.
2. Provide to the City a detailed construction schedule for review prior to the start of work. The schedule should include milestones where any facility outages would be required for tie-ins, electrical work, etc.
3. Site safety, first aid, and security measures, as required by the City, its insurance underwriters, consultants, and governing authorities during site preparation, construction, until project completion.
4. Develop and provide a complete health and safety plan (HASP) prior to commencement of construction activities.
5. Provide hazard monitoring and hazard mitigation systems in compliance with applicable codes.
6. Provide a geotechnical report for areas where foundations, etc. shall be installed, including a soil Proctor test to determine compaction.
7. Provide and maintain all temporary construction facilities, workspaces, and utilities. These may include but not be limited to offices, lunchrooms, locker rooms, restrooms, drinking water, sanitary waste disposal, fabrication areas, testing utilities and facilities, storage, construction roads, barricades, signs, document reproduction facilities, electric power and other such similar items. These shall be provided as needed, unless specifically identified as being provided by the City. These shall be provided in manner such as not to interfere with daily operations, as directed by the City and consistent with its requirements.
8. Maintain security of the construction site and coordinate high traffic and main road

interference.

9. Provide all necessary weather protection, construction heating, construction lighting, construction de-watering and drainage for the work and work areas during the construction and commissioning process.
10. All site preparation, demolition, disposal, rigging, and lifting required for installation of new equipment and foundations, including but not limited to: excavation, forming, backfill, grading, walkways, construction trailers and other items required for complete installation.
11. Request and obtain hot work permits and any other permits required during construction.
12. Storage and disposal of all excavated materials shall be included in the Proposal. See Section 6.7 for handling of potentially contaminated materials.
13. Provide temporary and permanent lighting systems required for new equipment areas, including but not limited to outside area operations, maintenance, and security lighting.
14. Utilization of existing wireways and duct banks for electrical installations, where possible. Contractor shall install conduit and cables to match existing installations when it is feasible to do so.
15. Provide connections to City-supplied temporary electrical power for construction operations, as needed.
16. Coat, paint, and identify all new equipment as required to meet current City standards.
17. Provide all waste disposal and cleanup, including daily housekeeping, for work on the Site.
18. Labor, materials, specialized tools, consumables, supplies, construction equipment, start-up spares, and materials of both a permanent and temporary nature.
19. Coordination with the City at such times when an outage is required for a phase of the construction process.
20. Restoration of all temporary use areas to original condition.
21. Complete all work required to fully install the new pool dehumidification system and integrate into the existing building automation system.

## **6.7 Environmental**

1. The Contractor shall submit a Hazardous Materials Management Plan to the City for approval prior to the start of work.
  - a. Piping, supports, structures and equipment to be modified or removed by the project shall be tested for the presence of lead paint. The Contractor shall be responsible for testing, abatement and disposal of all components identified to contain lead paint. The Contractor shall include costs for testing, abatement and disposal with bid.
  - b. Insulation and materials which have the potential to contain asbestos shall be tested. The Contractor shall be responsible for testing, abatement and disposal of all components and materials containing asbestos. The Contractor shall include costs for testing with its base bid. The Contractor shall provide a fee schedule/rate sheet to be applied for any required abatement and/or disposal of materials containing asbestos.
  - c. The Contractor's personnel shall be licensed and in good standing with the State of Colorado. The Contractor shall apply and obtain all applicable permits.

## **6.8 Quality Assurance**

1. Contractor shall maintain and provide all test records, data, calculations, drawings, diagrams, manuals, specifications, and other information and documentation to industry standards, and as reasonably requested by the City.
2. All QA/QC documentation shall be compiled in a project data book issued to the City at the end of the project. The project data book shall be issued in both electronic and hardcopy formats.
3. QA/QC documentation shall include but not be limited to: manufactured equipment specifications and O&M manuals, factory acceptance test reports, commissioning reports, and performance test data.

## **6.9 Commissioning and Startup**

1. Contractor shall be responsible for all initial testing, start-up, and commissioning of the new pool dehumidification system
2. A representative from the temperature controls contractor, test and balance contractor and pool dehumidification manufacturer shall schedule to be on site on the same day for one full day to start-up the unit.
3. A representative from the pool dehumidification unit manufacturer shall plan an additional ½ day on site for owner's training.
4. Contractor shall provide personnel and services required for testing, pre-commissioning, commissioning, start-up and site personnel training.

## **6.10 Acceptance Testing**

1. Contractor shall be responsible for operational performance testing of the new equipment to satisfactorily demonstrate the new system to the City, including any tests required for initial evidence of permit compliance, as required.

## **6.11 Warranty**

1. Contractor shall warranty the complete pool dehumidification system and all associated work/components for a period of 12 months following successful commissioning and acceptance testing.

## **6.12 Services/items to be performed by CITY**

1. The City shall furnish or have furnished at its expense only those items listed below:
  - a. Utilities required by Contractor during construction, commissioning, and completion of the project, including electricity and water.
  - b. Facility shutdown assistance and outage scheduling/direction.
  - c. When required, the City shall provide inspection, supervision, administration, hot work permits, and other services associated with the performance of Contractor's work.

- d. Property access and exclusive site access.

## **6. PROPOSAL REQUIREMENTS**

Interested Respondents shall submit Proposals that clearly demonstrate their ability to provide the Services. The Proposal should be a complete and detailed approach to providing all Services and any Additional Services that the Respondent proposes. Only one Proposal should be submitted. Proposal must be typewritten or computer-generated.

The Proposals shall include the following information in the order listed below to facilitate fair and equal evaluation of Proposals.

- A. COVER LETTER.** Briefly introduce the Respondent, explain the Respondent's interest in providing the Services, and articulate why the Respondent is qualified to provide the Services. Include the name, address, email address and phone number of the person who will serve as the Respondent's principle contact with City staff. Identify individual(s) who will be working on the project.
- B. METHOD.** Describe the Respondent's approach to the Services, including: how Respondent proposes to replace the system and work collaboratively with the City to complete deliverables; Respondent's approach to completing deliverables; and priority and scheduling. Provide information on the Respondent's current workload and ability to deliver the desired Services.
- C. QUALIFICATIONS OF CONTRACTOR & KEY PERSONNEL.** Information on recent, relevant or similar services and copies of membership in any professional organizations. Respondent should demonstrate relevant experience in providing services similar to the Services Provide information about the individuals that will be assigned to the Services, including their proposed role, expertise and capabilities. Any proposed subcontractors must be identified. Full resumes can be included in an appendix.
- D. PAST PERFORMANCE.** Provide two (2) client references within the past two (2) years, including contact name, firm or agency, phone number, email and brief summary of services provided. The City is especially interested in references that can attest to the Respondent's ability and performance in similar work with similar scope of services.
- E. EXCLUSIONS & ADDITIONAL SERVICES.** The Respondent must include any proposed exclusions to the Services or draft contract, providing specific details and the reasoning behind the exclusion, and any proposed Additional Services.
- F. ADDITIONAL INFORMATION.** The Respondent may list any additional information or data not requested as part of this RFP that Respondent believes should be considered in the evaluation of the Proposal provided the entire Proposal is no more than the identified page limit.
- G. FEE PROPOSAL.** A fee proposal **IN A SEPARATE SEALED ENVELOPE** consisting of:



- a. A firm, fixed total price for completion of the Services. This price shall include any and all costs to perform the Services to the City's satisfaction, including but not limited to all costs for materials, labor, travel, other typical reimbursable expenses, indirect costs (i.e. overhead and general and administrative costs), profit/fee, and meetings with City staff as deemed necessary by the City throughout the duration of the Services.
- b. A detailed breakdown of the total price for the Services for the entire Term. Fee proposals must include sufficient detail to allow insight into the fairness and reasonableness of the price.
- c. Identify any value-added services your firm is will to provide the City at no additional cost if awarded this Project. If an additional page is attached, title the page "Value Added Services."
- d. Respondents must include overview of the proposed design including quantity, size and location of system components as well as a high-level line-item breakdown of pricing for engineering, equipment, and construction.

Although the City does not anticipate compensating Respondent for any additional items or expenses, any such additional amounts to be charged to the City should be identified in the fee proposal.

## **7. SELECTION**

The City will use a qualitative-based selection process using the following criteria:

- a. Respondent qualifications
- b. Past experience, representative work, and references
- c. Proposed method and approach to fulfill the City's needs
- d. Price

Interviews may be requested once Proposals have been reviewed. The City may contact references provided with the Proposal. The City reserves the right to request clarification or additional information from Respondents and to consider independently obtained information.

The City will select the Respondent determined to be the best value by the City in its sole discretion. In addition to the criteria stated above, the City's determination may consider, without limitation, the Respondent's financial resources, ability to comply with all legal and regulatory requirements, ability to perform the Services and complete the Project 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.

The City reserves the right to negotiate further with one or more Respondent. Selection of any Contractor and execution of a contract is dependent on approval in accordance with applicable City laws and policies and the City's receipt of any required Certificates of Insurance and applicable endorsements. The City's decision is final and without recourse to any Respondent.

## 8. MISCELLANEOUS

### **Bid Guarantee requirement: Bidders must supply a 5% Bid Guarantee at the time of bid opening.**

The selected Contractor shall comply with Performance Bond requirements per Section VII of the attached draft contract.

The issuance of this RFP and the receipt and evaluation of Proposals do not obligate the City to select a Respondent, to enter into any agreement, or to pay any costs incurred in responding to this RFP or negotiating an agreement. Selection of any Contractor and execution of a contract is dependent on approval in accordance with applicable City laws and policies and the City's receipt of any required Certificates of Insurance and applicable endorsements. No Proposal shall constitute business terms of any eventual agreement except as expressly agreed by the City. 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.

All Proposals shall become the property of the City, will not be returned, and will become a public record. Respondents may request parts of their Proposals to remain confidential by indicating such in the Proposals and on the appropriate proprietary or financial pages, which must be clearly marked. 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.*, including notifying the Respondent of a CORA request and allowing the Respondent to take steps to prevent disclosure. Under no circumstances may an entire Proposal be marked or identified as proprietary or confidential. **By submitting a Proposal, each Respondent agrees to hold the City harmless from any claims arising from the release of confidential or proprietary information not clearly designated as such by the Respondent or where the City has notified the Respondent of a request, and from any claims arising from the release of documents not protected from disclosure under the Act.**

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 of the Selection Committee, the City Council 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.

## ATTACHMENT A TO RFP – DRAFT AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the “Agreement”) is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2021 (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. SERVICES.

A. Services. At the City’s direction, Contractor will provide **type of services** services as set forth in Exhibit A, attached and incorporated by reference (the “Services”). The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to Contractor.

B. 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.

#### D. Deliverables.

1. Electronic format. Contractor will provide all reports, surveys, maps, plans, drawings or photographs, or any other materials that lend themselves to production in electronic format (“Deliverables”) to the City in both hard copy and electronic formats acceptable to the City, unless otherwise directed by the City in writing. Contractor’s failure to do so will constitute a material breach of this Agreement. Contractor will consult with the City to determine acceptable electronic formats before beginning the Services. All Deliverables and other tangible materials produced by Contractor pursuant to this Agreement will at all times be considered the property of the City. Deliverables which include spatial data that is intended for use within the City’s GIS will be an Esri file geodatabase (.gdb), or a shapefile (.shp), or an AutoCAD drawing file (.dwg). All deliverables will contain a file describing coordinate systems used. Contractor will provide complete metadata (who, what, when, where, how) for all provided spatial data and related information, including but not limited to the following: file description, attribute descriptions, author and contact information (credit), and date created.

2. Digital images. Contractor will provide non-copyrighted, high resolution, illustrative, digital images of project site plans, elevations, renderings, photos, and other Deliverables, as directed by the City, suitable for reproduction of and dissemination in marketing materials and at City Council hearings and public presentations. Contractor will affirm that the images do not violate copyright laws and will

indemnify and hold harmless the City from liability for any expense, cost, loss or damage resulting from any claim of copyright infringement arising from the City's use of the images. All images provided will become the property of the City.

3. Ownership. Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor in the course of performance of the Services shall be exclusively owned by the City. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes 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; 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 the Contractor's obligations and liabilities will not be diminished by reason of any approval or review by the City. Contractor further represents that the Services provided: (i) will be performed in accordance with the applicable professional standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions faced by Contractor, and (ii) will be performed in a timely manner as required by the Agreement and performed and supervised by qualified personnel. Contractor further represents that all application software developed or implemented by Contractor under this Agreement, when used in accordance with its associated documentation, shall not infringe upon the rights or marks of a third party. Lastly, Contractor represents that it is not a party to nor subject to any agreement or order which would limit, prevent or restrict its performance of any Services.

F. Warranties. Contractor 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 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. 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 and for no additional compensation.

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. 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.

K. Rate of Progress. Contractor will complete all Services to the City's satisfaction within **identify timeframe (not contract term) if applicable, or delete sentence**. 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 and Workplace Violence; Compliance with Applicable Law. Contractor and its employees and agents, while performing the Services or while on City property for any reason during the Term, will adhere to the City's policies applicable to City employees regarding drugs, alcohol and workplace violence. Policies will be made available to Contractor upon request. Contractor will comply with all applicable federal, state and local laws, ordinances and regulations.

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, a sum not to exceed **\$Numerical Dollars & Cents (if applicable; otherwise, modify accordingly)**. The compensation established by this Agreement includes all of Contractor's costs and expenses to fully perform the Services and other obligations of this Agreement. The City will not consider or be obligated to pay or reimburse Contractor any other charges or fees and Contractor will not be entitled to any additional compensation or reimbursement.

B. Invoices. Contractor will submit invoices on a monthly basis, in a format approved by the City, and provide verification documentation as requested by the City. Invoices will be submitted to the City not more frequently than monthly. Invoices will identify the specific Services performed for which payment is requested, including a description of the Services, the applicable rates, any costs for which Contractor seeks reimbursement, and the total amount that Contractor claims is due.

C. Representation. By submitting an invoice, Contractor 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.

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

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

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

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

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

G. Subject to Annual Appropriation. This Agreement will neither constitute nor be deemed a multiple fiscal-year debt or financial obligation of the City. Contractor acknowledges that: the City has made no promise to continue to budget funds beyond the current fiscal year; and the City has made no promise that it has pledged or will pledge adequate cash reserves on a fiscal-year by fiscal-year basis. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, 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 until [Click here to enter a date](#) (“Term”), unless the Term is extended by validly executed written amendment.

B. Termination.

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

2. For Cause. If, through any cause, Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement or violates any applicable law (“Breach”), the City may terminate this Agreement for cause immediately upon written notice of termination to Contractor. Contractor will not be relieved of liability to the City for any damages sustained by the City by virtue of any Breach, and the City may withhold payment to Contractor for the purposes of setoff until such time as the exact amount of damages due to the City from Contractor is determined. If Contractor challenges a termination for cause by the City and prevails, the termination for cause will be deemed to be a termination for convenience and will be effective fourteen (14) days from the date that the original written notice of termination for cause was given to Contractor and no further notice will be required.

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

C. Contractor’s Remedies for Breach.

1. Contractor may terminate this Agreement for non-payment of sums due under this Agreement except where non-payment is pursuant to the City’s rights under this Agreement. Contractor will first provide the City written notice of Contractor’s intent to terminate and allow the City ten (10) days within which to make payment.

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

**IV. INDEMNITY.**

Contractor will be liable and responsible for any and all damages to persons or property 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 (the “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 at least **One Million Dollars (\$1,000,000)** each occurrence.

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

3. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by Contractor that are used in connection with performance of the Services, whether the motor vehicles are owned, non-owned or hired, with a combined single limit of at least **One Million Dollars (\$1,000,000)**.

4. Professional Liability Insurance. If Contractor is an architect, engineer, surveyor, appraiser, physician, attorney, accountant or other licensed professional, or if it is customary in the trade or business in which Contractor is engaged, or if the City otherwise deems it necessary, errors and omissions professional liability insurance insuring Contractor against any professional liability with a limit of at least **One Million Dollars (\$1,000,000.00)** per claim and annual aggregate.

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

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

B. Terms of Insurance.



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

2. Qualification; Deductible. Insurance required by this Section will be with companies qualified to do business in the State of Colorado and may provide for deductible amounts as Contractor deems reasonable for the Services, but in no event greater than **Ten Thousand Dollars (\$10,000.00)**, and Contractor will be responsible for the payment of any such deductible.

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

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

5. No "Pollution Exclusion." The insurance required by this Agreement will cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, and will not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. If necessary, Contractor will secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims or suits, as described in subsection ii(a), with at least **Two Million Dollars (\$2,000,000)** each occurrence, subject to approval by the City, which approval will not be unreasonably withheld.

6. Evidence of Coverage. Before commencing work under this Agreement, Contractor will provide certificates of insurance policies and all necessary endorsements evidencing insurance coverage required by this Agreement. The City will not be obligated under this Agreement until Contractor provides acceptable such certificates of insurance and endorsements. If the Term extends beyond the period of coverage for any required insurance, Contractor will, at least ten (10) days before the expiration of any such insurance coverage, provide the City with new certificates of insurance and endorsements evidencing either new or continuing coverage.

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

## **VII. BONDS.**

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

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

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

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

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

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

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

## **VIII. 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.

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

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

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

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

1. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

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

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

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

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

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

2. If Contractor executes the affidavit stating that he/she is an alien lawfully present in the United States, the City will verify his/her lawful presence through the federal systematic alien verification or entitlement program, known as the "SAVE Program," operated by the U.S. Department of Homeland Security ("DHS") or a successor program designated by DHS. If the City determines through the verification process that Contractor is an alien not lawfully present in the United States, the City will terminate this Agreement without further obligation to Contractor.

**X. 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.

**XI. 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. No Training or Instruction. The City will not provide training or instruction to Contractor or any of its employees regarding the performance of the Services hereunder.

F. No Benefits. Neither the Contractor nor any of its officers or employees will receive benefits of any type from the City.

G. 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.

H. 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.

I. 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.

## **XII. GENERAL PROVISIONS.**

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

B. Governing Law; Jurisdiction and Venue; Recovery of Costs. This Agreement will be governed by the laws of the State of Colorado without regard to its conflicts of laws provisions. For all claims arising out of or related to this Agreement, Contractor consents to the exclusive jurisdiction of and venue in the state courts in the County of Adams, State of Colorado. Contractor waives any exception to jurisdiction because of residence, including any right of removal based on diversity of citizenship. The prevailing party in any litigation to resolve a dispute between the parties arising from this Agreement will be entitled to recover court costs and reasonable attorney fees from the non-prevailing party.

C. Governmental Immunity. No term or condition of this Agreement will be construed or interpreted as an express or implied waiver of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

D. COVID-19 and Other Public Health Emergencies. While on City property, Contractor and any employees and subcontractors will comply with all public health orders and laws related to the COVID-19 public health emergency and any other public health emergency in the City, and all City directives relating to any public health emergency, including distancing, face coverings, employee screening, and sanitation. Contractor will not permit any employee who has tested positive for COVID-19, who is exhibiting symptoms of COVID-19, or who has exhibited symptoms within the prior 10 days, to be present at any City facility.

E. 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.

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

G. 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.

H. 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.

I. 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.

J. 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.

K. 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. 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 agrees to 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.**

L. 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.

M. 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

N. 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.

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

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

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

**CITY OF COMMERCE CITY**

\_\_\_\_\_  
Name, Title Based on Amount  
Select Department

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Dylan A. Gibson, City Clerk

\_\_\_\_\_  
Brian Swann, Assistant City Attorney

Recommended for approval:

\_\_\_\_\_  
Name, Title  
Select Department

**CONTRACTOR NAME**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name, Title

[must be notarized]

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_ (Name), \_\_\_\_\_ (Title), of  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**SCOPE OF WORK**



**EXHIBIT B**

**[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 60<sup>th</sup> 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 =  $\frac{1}{12}$  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:**

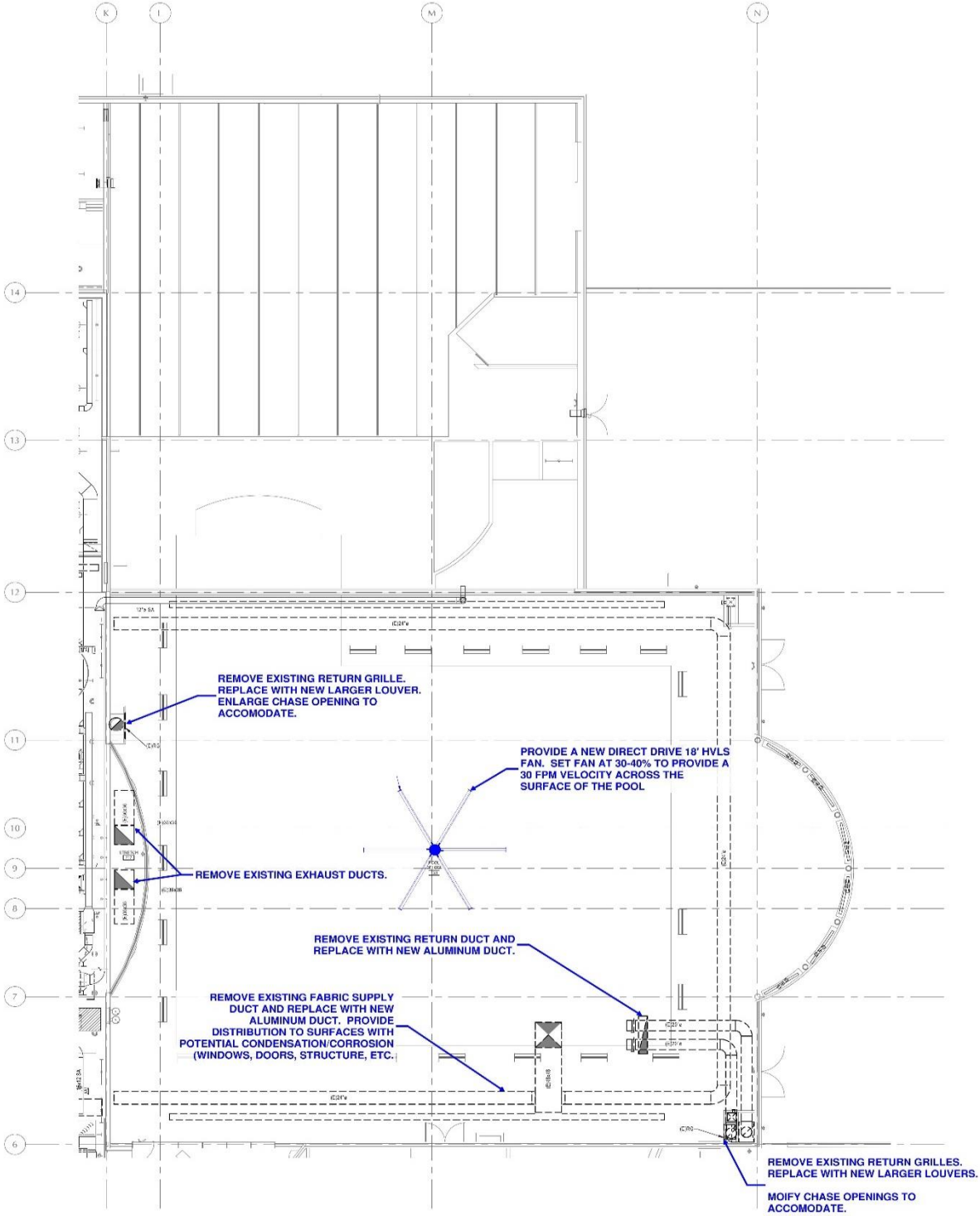
Description of Equipment and/or VIN number: \_\_\_\_\_

Purchase price of above equipment and date purchased: \_\_\_\_\_

Date equipment will enter the City: \_\_\_\_\_

Date equipment will be removed from the City: \_\_\_\_\_

**Attachment C – Floor Plan**



**Attachment D – Roof Plan**

