

**Owners Representative for City Facilities Capital Improvement
Projects**

September 16, 2022

REQUEST FOR PROPOSALS



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

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. INVITATION	3
2. SELECTION SCHEDULE/KEY DATES	4
3. SCOPE OF SERVICES	5
4. PROPOSAL FORM	8
5. EVALUATION CRITERIA & SELECTION PROCESS	12
6. METHOD OF SUBMITTAL	13
7. DRAFT CONTRACT (Attachment A)	14

1. INVITATION

The City of Commerce City (“City”) is soliciting proposals from qualified vendors (“Respondents”) to provide owner’s representative/project management services as related to Commerce City facilities capital maintenance projects, as more fully described in this Request for Proposals (“RFP”). Any selected Respondent will be expected to provide professional Services to the City in one or more of the aforementioned subject areas, as more fully detailed in the Scope of Services section of this RFP (“Services”).

This RFP provides a general description of the professional service areas for which the City is seeking qualified Respondents, submittal requirements, and outlines selection criteria and the selection process. A response to this RFP (“Proposal”) should serve as a complete approach to providing of the Services listed above. Each proposal must clearly state which services the firm (team) is willing to perform along with all pertinent rates for the services. Any proposed subcontractors/team members must be identified and their roles clearly defined in the Proposal.

The City intends to execute contracts with an anticipated notice to proceed date of October 17, 2022, with the selected Respondent (the selected Respondent will be referred to as “Consultant” in this RFP and any resulting contract). Any contracts awarded will be on a non-exclusive basis for an initial **3-year term at the same rates**, with the City having the option to extend for up to **two (2) potential annual renewals at negotiated rates**, subject to annual appropriation. Any selected Respondent will be expected to enter into a Master Professional Services Agreement (Attachment A) with the City consistent with the terms of this RFP.

Submission requirements and deadlines are detailed in Section 6 of this RFP.

- Questions regarding RFP requirements must be received by **Michael Brown, Deputy Director of Operations** in writing at **mbrown@c3gov.com** by **4:00 PM MT on Friday, September 23, 2022**.
- **Proposals must be received by 3:00 p.m. MT, on Friday, September 30, 2022.**

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

2. SELECTION SCHEDULE /KEY DATES

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

Publication and distribution of RFP:	Friday, September 16, 2022
Question submission deadline:	Friday, September 23, 2022 (4:00 p.m. MT)
Responses to questions posted (anticipated):	Tuesday, September 27, 2022
Proposal submission deadline:	Friday, September 30, 2022, (3:00 p.m. MT)
Review period (anticipated):	1 week(s)
Interviews (if any) (anticipated):	Week of October 3, 2022
Selection (anticipated):	Monday, October 10, 2022
Respondent submits insurance and other required documentation:	Within ten (10) calendar days of Notice of Intent to Award
Execute contract (anticipated):	Monday, October 17, 2022

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

3. COMMERCE CITY INFORMATION

Community Context

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



About Commerce City

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

4. SCOPE OF SERVICES

Objective: The City of Commerce City requests proposals from experienced firms for project management/owner's representative services as related to City of Commerce City facilities capital maintenance, repair, renovation and expansion projects.

Background: The City recently completed comprehensive facility assessments to identify needed future capital repair, renovation, expansion and maintenance projects throughout City facilities. Approximately \$11,000,000 in funding is budgeted and approved for a variety of projects through 2024.

SCOPE OF WORK

- Establish Owner's Representative as the central point of contact for coordinating all project activities, including the process for approvals, maintenance of project records, responses to inquiries from consultants, suppliers, and contractors, transfer of information to decision-makers, coordination of project information flow, and progress reports to the City management.
- Owner's Representative to commit key staff members (named in the proposal and assigned to the project throughout construction phases) to manage projects from pre-construction through attendance of bi-weekly project meetings, preparation of RFIs, management of vendors, schedule, quality, and costs.
- Provide overall cost estimating for each proposed project. Manage budget expense tracking from start to completion of projects. Assist the City with monitoring, identifying cost savings, and design options/products.
- Write Scope of Work and create bid packages for each project. Prepare bid packages for City for advertising on City website and Rocky Mountain E-Purchasing System.
- Respond to bidder questions during RFP advertisement period.
- Review all submittals and assist City staff in the selection process.
- Recommend final approval of bid awards. Complete all required City notifications to unsuccessful and successful bidders.
- Provide overall project scheduling as well as construction scheduling for all projects. Provide monthly update to department management of project status.
- Arranges pre-construction conferences.
- Coordinates with utility companies any relocations or issues due to the work to be performed.
- Determine what consultants and services will be necessary to deliver the project in compliance with all applicable federal, state and local regulations, and oversee the permitting, procurement, contracting, monitoring and management of all project consultants, design professional, contractors and vendors and their associated scope on behalf of the City.
- Assist the City with the development and review of contracts with consultants and assist in the negotiation of fees and contracts with consultants. The City's attorney will review contracts.
- Identify all state and local agencies that will be utilized during the review process

and oversee the submittal process. This will include coordination of all site improvement requirements with state and local agencies.

- Act as liaison between the project team members and assist in the obtaining of building permits, other governmental approvals, authorizations, and signoffs as necessary for the design, construction, and operations of the project.
- Document management and control including all construction and construction administration documents.
- Monitors contractor's performance and enforcing all requirements of applicable codes/standards, specifications, and contract drawings.
- Document and coordinate construction team payment requests.
- Coordinates staff training and operation and maintenance practices if needed after completion of capital maintenance item(s).
- Recommends Substantial and Final Completion.
- Establishes punch list of items to be addressed.
- Completes all project documentation including, but not limited to, change order summary, final detail estimate, project acceptance documentation, and claims management/ resolution.
- Posts Notice of Final Settlement for vendors and recommends retainage payments.

Project Management

When requested by the City, Consultant shall prepare and submit to the City for approval a project management plan that: specifies a schedule of work; details the roles and responsibilities of Consultant and sub-contractors; identifies work tasks, milestones, and review/comment milestones; and a public outreach plan. Consultant will participate in meetings at least twice a month with the City's Project Manager and meetings with specific City Departments, key stakeholders, and outside agencies, as necessary. Consultant will prepare meeting agendas and keep meeting notes. Consultant will promptly respond to City requests (both routine and emergency).

Coordination of Public Outreach; Notices

If applicable to a specific project and requested by the City in a Work Order, Consultant will ensure the proper delivery of notices and other documents to third parties as required by applicable with respect to the preparation and completion of each deliverable. Consultant will coordinate and conduct public outreach for the creation of the key deliverables.

Public Hearing and Study Session Presentations

If applicable to a specific project and requested by the City in a Work Order, Consultant will conduct meetings with key elected and appointed officials (i.e. Planning Commission and City Council). Consultant should plan to make a presentation at a study session with Planning Commission and City Council, and a presentation during the public hearing for adoption. Consultant will develop and submit a schedule as part of the proposal for obtaining input from elected and appointed officials. Consultant should plan to take the lead role in all study session and hearings with elected and appointed officials. City staff shall be available to Consultant in a supporting role during the period. Consultant shall be responsible for creating meeting notes from each meeting, summarizing responses and comments provided by elected and appointed officials.

City Oversight

A designated individual will be responsible for management of the contract for the City (“Project Manager”). The City will provide reasonable assistance to Consultant in the scheduling of meetings, interpretation of policy and procedural requirements, research relating to internal documents, coordination with outside agencies and City staff, but the City’s obligation will not limit Consultant’s obligations to perform the Services. The City will rely on the personnel, experience, and expertise of Consultant to ensure all necessary components of a project’s scope of work are completed.

Timeline and Budget

Consultant must complete all deliverables within any agreed-upon schedule and within the limits provided by the executed contract and executed Work Orders.

City Holidays

City Holidays currently include: New Year's Day; Martin Luther King Day; President's Day; Memorial Day; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day; Day After Thanksgiving; Christmas Day.

Safety

Consultant shall be responsible for all safety training, procedures and requirements.

Contract Requirements

Consultant will perform all Services in accordance with the executed Master Professional Services Agreement. ***Please refer to Attachment A for all contract requirements, including insurance, indemnification, compensation, termination, and payment standards.***

5. PROPOSAL FORM

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

Respondents may request parts of their Proposals to remain confidential and must indicate such in the Proposals and on the appropriate proprietary or financial pages; provided, under no circumstances may an entire Proposal be marked or identified as proprietary. **The City will take reasonable steps to keep confidential only documents actually prevented from disclosure under the Colorado Open Records Act ("CORA" or "Act"), C.R.S. § 24-72-201, et seq., which efforts may include notifying the Respondent of a CORA request and allowing the Respondent to take steps to prevent disclosure, where and when it is reasonably possible to do so. By submitting a Proposal, each Respondent releases the City from any claim of damage or loss arising from the release of confidential or proprietary information not clearly designated as such by a Respondent, from the City's disclosure of such information following the City's prior notification to the Respondent, and from any claims arising from the release of documents not protected from disclosure under the Act.**

Proposals shall include the following items in the order listed:

- **COVER LETTER:** A cover letter indicating the Respondent's interest and identifying the entity or entities submitting the Proposal. The letter identifies the name, address, email address, and telephone number of the person to contact, along with other contact information for those authorized to represent the Respondent. The letter should also include:
 - A signature by a representative of the Respondent authorized to bind the Respondent for the terms proposed hereinabove.
 - Any criteria expected by the City that the Respondent will not provide.
 - Any proposed changes to the draft Professional Services Agreement (Attachment A).
 - Any other information not appropriately contained in the body of the Proposal.
- **PROJECT TEAM QUALIFICATIONS.** Provide information about individuals that may be assigned to perform the Services, including role, expertise and capabilities, correlated to the Service that he or she will provide. Resumes can be included. If sub-consultants are included, identify prior experience working with them as a team and summarize their qualifications.
- **RELATED WORK EXPERIENCE & PERFORMANCE.** Include examples of recent (within the past 3 years) projects that serve as successful examples to support selection of the firm for the specific discipline. Identify the project team members who worked on each project.

Highlight any relevant examples where the firm has provided successful services to the City in the past.

- **SCOPE OF PROPOSAL**

- Provide a detailed narrative of the services proposed if awarded the contract per the scope above. The narrative should include any options that may be beneficial for the City to consider.
- Describe how the project would be managed and who would have primary responsibility for its timely and professional completion.
- Briefly describe the approach to execute the scope of work to include the methods and assumptions used, and any exceptions and/or risks.
- Describe the methods and timeline of communication your firm will use with the City's Project Manager and other parties.
- Include a description of the software and other analysis tools to be used.
- Identify what portion of work, if any, may be subcontracted or outsourced to sub-consultants. Include all applicable information herein requested for each Service Provider/Professional.

- **RESPONSE TO KEY QUESTIONS. In responding to this RFP, three key questions should be answered:**

- How does your firm provide value-added, cost-effective services?
- How does your firm incorporate quality into its planning & design process and how are these efforts realized by its clients?
- How does your firm incorporate customer service into its work activities and deliverables?

- **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.

- **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.

- **COST AND WORK HOURS.** In your response to this proposal, please provide the following:

- Estimated Hours by Task: Provide estimated hours for each proposed task by job title and employee name, including the time required for meetings, conference calls, etc.
- Costs by Task: Provide the cost of each task identified in the Scope of Work section. Price all additional services/deliverables separately.
- Schedule of Rates: Provide a schedule of billing rates by category of employee and job title to be used during the term of the Agreement. This fee schedule will be firm for at least one (1) year from the date of the Agreement. The fee schedule will be used as a basis for determining fees should additional services be necessary. Include a per

meeting fee rate to be charged in the event additional meetings are needed. A fee schedule for sub-consultants/subcontractors, if used, shall be included.

- Rates for reimbursable expense costs such as travel, mileage, postage, printing, etc., specifically attributed to the project and not included in the billing rates must be identified. Service Provider/Consultant will be required to provide original receipts to the City for all travel expenses.
- Any other charges incurred during the normal course of a project should be identified along with the terms for reimbursement/cost recovery.

- **Additional information:**

- A. Affirmative Participation Plans: An outline of affirmative steps that Respondent will take to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (1) placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- B. Potential Conflicts of Interest: List any work that your firm or your proposed sub-consultants are currently performing for the City or for entities within the City.
- C. Miscellaneous: Any supplemental information and attachments relevant to the Proposal, Respondent's qualifications, or Respondent's approach. Respondents are encouraged to expand upon the specifications to give additional evidence of their ability to provide the Services.

6. EVALUATION CRITERIA & SELECTION PROCESS

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

- Approach to Services.
- Timeline.
- Qualifications/Experience.
- Outreach Approach.
- Rate Sheet.
- Innovation/Creativity.
- Affirmative participation plan.

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

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

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

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

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

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

7. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

8. METHOD OF SUBMITTAL

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

Questions regarding this RFP must be received in writing via email no later than 4:00 p.m. on, Friday, September 23, 2022. Responses to questions will be on the City's website and on the RMEPS as an addendum to the RFP. Questions must be submitted to:

Michael Brown, Deputy Director of Operations
mbrown@c3gov.com

Proposals containing the information required by this RFP, in the format described below, must be received no later than 3:00 p.m. (MT) on Friday, September 30, 2022. Proposals shall be submitted to the "The Rocky Mountain E-Purchasing System" website (<http://www.rockymountainbidsystem.com>).

A copy of the Request for Proposals and any related materials may be obtained from the City's website (<http://www.c3gov.com/doing-business/bid-postings>) or the Rocky Mountain E-Purchasing System (<http://www.rockymountainbidsystem.com>).

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

9. DRAFT CONTRACT

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

ATTACHMENT A TO RFP – DRAFT MASTER PROFESSIONAL SERVICES AGREEMENT

MASTER PROFESSIONAL SERVICES AGREEMENT

THIS MASTER PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into effective this ____ day of _____, 202____ (“Effective Date”), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado (“City”), and [Insert the Consultant’s full legal name in all caps (e.g., “JONES ENGINEERING AND DESIGN, LLC”)], a [Insert the contractor’s home state (e.g., “Colorado;” Delaware,” etc.)] Select Entity Type whose principal business address is [Insert Consultant's principal business address (e.g., “452 Front Street, Boulder, CO 80303”)] (“Consultant”).

WHEREAS, the City desires to retain the services of Consultant, and Consultant 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, Consultant will [Insert very brief, general description of services (e.g., "provide on-call environmental engineering services)] as set forth in Exhibit A – “Scope of Services,” attached and incorporated by reference (“Services”). Consultant shall completely and promptly execute and perform all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in Exhibit A, and pursuant to Work Orders, as defined below, if applicable (“Services”). The terms and conditions of this Agreement shall apply to the performance of all Services under this Agreement, whether performed with or without a Work Order and notwithstanding the failure of any Work Order to incorporate this Agreement by reference.

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

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

B. Changes to Scope of Services. A change in the Scope of Services, any Work Order, or invoiced Service shall not be effective unless expressly authorized by an employee of the City with the requisite authority to do so. If Consultant proceeds without such formal authorization, Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as

expressly provided herein, no agent, employee, or representative of the City is authorized to modify any term of this Agreement, either directly or implied by a course of action.

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

D. Format and Ownership of Deliverables.

1. Format. Consultant 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. Consultant's failure to do so will constitute a material breach of this Agreement. Consultant will consult with the City to determine acceptable electronic formats before beginning the Services. All Deliverables and other tangible materials produced by Consultant 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. Consultant 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. Consultant 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. Consultant 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 Consultant in the course of performance of the Services shall be exclusively owned by the City. Consultant 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," Consultant 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 Consultant.

E. Consultant Representations; Standard of Care. Consultant 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. Consultant acknowledges that the City is relying on Consultant's expertise, skill, and knowledge, and that Consultant's obligations and liabilities will not be diminished by reason of any approval or review by the City. Consultant 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 Consultant, and (ii) will be performed in a timely manner as required by the Agreement and performed and supervised by qualified personnel. Consultant further represents that all application software developed or implemented by Consultant under this Agreement, when used in accordance with its associated documentation, shall not infringe upon the rights or marks of a third party. Lastly, Consultant 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. Prosecution of the Services. Consultant will perform all work in a professional, workmanlike, and timely manner. Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all materials produced and other services furnished by the Consultant under this Agreement. Consultant will furnish all labor, materials, tools, supplies, machinery, utilities, and other equipment that may be necessary for the prompt completion of the Services. Consultant will monitor, supervise, and otherwise control and be solely responsible for all persons or entities performing work on its behalf. The Services to be performed by Consultant hereunder shall be done in compliance with any and all applicable laws, ordinances, rules and regulations. All work, if related to construction, will be performed in accordance with the City's Engineering Standards and Specifications.

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

H. Subcontractors. Consultant 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.

I. Licenses, Permits & Taxes. Consultant and each subcontractor will be responsible to obtain all required licenses and permits, including a City Contractor's license, if required. Consultant will pay any and all license and permit fees. Consultant is responsible for the payment of applicable taxes, including the City's sales and use tax, if applicable.

J. Time for Completion. Consultant shall fully perform, complete, or present all identified tasks, sub-tasks, and Deliverable items by the deadline(s) established in the Scope of Services, any Work Order, or as otherwise directed by the City, as applicable. Consultant's rate of progress is a material term of this Agreement. At the City's request, Consultant will provide a progress schedule for the performance of any Services subject to the City's approval.

K. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of Consultant 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. Consultant will cooperate with the City relating to such monitoring and evaluation.

L. Drugs, Alcohol, Workplace Violence, and Harassment; Compliance with Applicable Law. Consultant and its employees and agents, while performing the Services or while on City property for any reason during the Term, will adhere to the City's policies applicable to City employees regarding drugs, alcohol, workplace violence, and harassment. Policies will be made available to Consultant upon request. Consultant will comply with all applicable federal, state and local laws, ordinances and regulations.

M. Non-Exclusivity. The City may engage the services of other persons for the provision of Services that could be performed under this Agreement. Consultant 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 Consultant for work actually performed, in accordance with the rates set forth in Exhibit A and as may be set forth in Work Orders or invoices, provided such amounts set forth in any Work Order or invoice have been previously agreed to by the City pursuant to this Agreement. The compensation established by any Work Order or invoice shall include all of Consultant'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 Consultant any other charges or fees and Consultant will not be entitled to any additional compensation or reimbursement.

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

C. Invoices.

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

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

3. Representation. By submitting an invoice, Consultant 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

Consultant or any other person or entity. Consultant 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 Consultant within thirty (30) days after receipt and approval of invoices submitted by Consultant. The City's obligation to make payment is contingent upon the Consultant's: (a) submission of a complete and accurate invoice; and (b) satisfactory performance of the Services and conditions of this Agreement. The City may withhold payment of any disputed amounts, and no interest will accrue on any amount withheld pending the resolution of the dispute. The City's review, approval or acceptance of, or payment for any Services shall not be construed to operate as a waiver of any rights under this Agreement, or a waiver of any cause of action arising out of the performance of this Agreement.

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

F. Subject to Annual Appropriation. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 12, Chapter XII of the Charter of the City of Commerce City. Consultant acknowledges and accepts that nothing herein shall constitute or be deemed to constitute the creation of any kind of multiple fiscal-year debt, liability, or financial obligation of the City. Further, Consultant acknowledges and accepts that no provision of this Agreement shall be construed to create any kind of obligation of future monetary appropriations by the City Council of Commerce City that may run contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or Charter debt limitation. Consultant acknowledges that the City has made no promise to continue to budget funds beyond the current fiscal year, and further acknowledges that the City has made no promise that it will pledge adequate cash reserves on a fiscal-year by fiscal-year basis, notwithstanding any provision of this Agreement that may be construed to the contrary. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation or liability of the City which may arise under this Agreement in any fiscal year after the date of execution, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

G. Changed Conditions. Consultant 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. Consultant 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. For Convenience. Consultant agrees that the City may terminate this Agreement without cause at any time for convenience of the City. Consultant assumes all risks of being terminated for convenience, whether such risks are known or unknown, and acknowledges that the City’s decision to terminate for convenience lies solely within the City’s own discretion. Consultant represents that it is a sophisticated business, has entered into the Agreement voluntarily, and has calculated all business risks associated with this Agreement. In the event of a termination for convenience, the City will provide written notice of termination to Consultant at least fourteen (14) calendar days prior to the effective date of termination. Consultant expressly agrees to and assumes the risk that the City shall not be liable for any costs or fees of whatsoever kind and nature if termination for convenience occurs before Consultant begins any work or portion of the work. Consultant expressly agrees and assumes the risks that the City shall not be liable for any unperformed work, anticipated profits, overhead, mobilizations costs, set-up, demobilization costs, relocation costs of employees, layoffs or severance costs, administrative costs, productivity costs, losses on disposal of equipment or materials, cost associated with the termination of subcontractors, costs associated with purchase orders or purchases, or any other costs or fees of any kind and nature, if Consultant has started or performed portions of the Contract prior to receiving notice of termination for convenience from the City. The City shall be liable only for the portions of work Consultant actually satisfactorily completed up to the point of the issuance of the notice of termination for convenience. The Consultant shall have no claim of any kind whatsoever against the City for any termination without cause, except for compensation for work completed to the satisfaction of the City.

2. For Cause. If, through any cause, Consultant fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law relating to the performance of this Agreement (“Breach”), the City may terminate this Agreement for cause immediately upon written notice of termination to Consultant. Consultant 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 Consultant for the purposes of setoff until such time as the exact amount of damages due to the City from Consultant is determined. If Consultant challenges a termination for cause by the City and prevails on all grounds asserted as a basis for such termination, the termination for cause will be deemed to be a termination for convenience and will be effective fourteen (14) days from the date that the original written notice of termination for cause was given to Consultant; no further notice will be required. As an alternative to immediate termination of the Agreement, the City may, but is not required, to provide written notice of a Breach to the Consultant, and allow the Consultant a reasonable period of time to cure the Breach, subject to the discretion of the City.

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

- a) The Consultant fails or refuses to expeditiously and actively undertake or substantially or timely perform its responsibilities and obligations, or fails or refuses to make adequate progress in performing its responsibilities and obligations under this Agreement, including those stated in the Scope of Services, any Work Order, or as otherwise directed by the City;
- b) There is substantial evidence that it has been or will be impossible for the Consultant to perform the Services required due to matters within the Consultant's control such as voluntary bankruptcy, strikes, boycotts, and labor disputes involving the Consultant's employees or closure or suspension of operations by regulatory order of a governmental entity or an order of a court due to violations or infractions by the Consultant or the Consultant's employees;
- c) The Consultant has submitted requests for payment under this Agreement that are fraudulent or persistently or flagrantly erroneous or misleading;
- d) The Consultant has made an assignment or transfer of, or subcontracts, any or all of its responsibilities and obligations under this Agreement in violation of the terms of this Agreement;
- e) The Consultant fails to obtain, renew, replace, or maintain the insurance coverage required by this Agreement, or causes or is at fault for damage to property or injury to persons that is not covered or not adequately covered by insurance and the Consultant fails to remedy the situation to the satisfaction of the City;
- f) The Consultant fails to obtain or properly and timely maintain any financial assurances required by this Agreement;
- g) Any lien is filed against City property because of any act or omission of the Consultant and is not timely discharged, unless the Consultant furnishes to the City such bond or other financial assurance reasonably acceptable to protect the interests of the City;
- h) The Consultant has failed to obtain or maintain any required permit or license, or has utilized personnel or workers not licensed or registered as required by law;
- i) The Consultant has failed to deliver title or warranties or has failed to honor warranties as required by this Agreement;
- j) The Consultant has flagrantly or persistently failed or refused to comply with any applicable laws or City policies, or fails or refuses to rectify any condition or situation in violation of applicable law or City policies;
- k) The Consultant or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid rigging,

antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Consultant's business.

3. For Non-Appropriation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any Work Order, sub-agreement, attachment, schedule, or exhibit thereto, by the City.

C. Effect of Termination.

1. For termination pursuant to either Section III(B)(1) or (2), above, the City will be liable only for Services that Consultant actually requested by the City and completed to the City's satisfaction up to the date of the effective date of termination.

2. For termination pursuant to either Section III(B)(3), above, the City will be liable only for Services that Consultant actually requested by the City and completed to the City's satisfaction up to the date of the effective date of termination to the extent that the budget for the year of such termination provided sufficient funds to discharge such obligation.

3. Following termination for any reason, under no circumstances will the City be liable for any costs related to Services not performed to the satisfaction of the City, any Services not requested by the City, or any Services that the City directed the Consultant to not perform. The City will not be liable to Consultant for any unperformed Services, anticipated profits, overhead, mobilization or demobilization costs, administrative costs, productivity costs, losses on disposal of equipment or materials, cost associated with the termination of subcontractors, costs associated with purchase orders or purchases, or any other costs or fees of any kind and nature.

4. Upon receipt of a notice of termination, Consultant will:

(a) Immediately discontinue performance of the Services (unless otherwise instructed in writing);

(b) Take reasonable actions necessary, or as the City may direct, for the protection and preservation of completed or partial work;

(c) Provide the City with all drawings, specifications, photographs, data, and other pertinent documents and information relating to work completed or partially completed, in either their original format or such other commercially reasonable format as the City may direct; and

(d) Cooperate in all respects with the City, which cooperation shall include, but not be limited to, all of the foregoing obligations listed herein, as well as assisting the City during a transition to another contractor for the Services, if applicable.

5. The City may pursue any remedies available at law or equity. Consultant shall be liable to the City for any loss or damage sustained by the City because of failure to perform in accordance with this Agreement.

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

D. Consultant's Remedies for Breach.

1. Consultant 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. Consultant will first provide the City written notice of Consultant's intent to terminate and allow the City thirty (30) days within which to make payment.

2. Notwithstanding any claim of a material breach by the City, Consultant shall not discontinue performance of the Services without the written consent of the City.

IV. INDEMNITY.

Consultant 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 Consultant, its employees, agents, or other persons acting under Consultant's direction or control. Consultant will indemnify and hold harmless the City, as well as its elected and appointed officials, current and former officers and employees, servants, volunteers, agents, attorneys, representatives, insurance carriers, and self-insurance pools ("Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of or a failure to observe any applicable standard of care by Consultant and/or its employees, agents or representatives or other persons acting under Consultant's direction or control. Consultant 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 Consultant 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 Consultant has been informed of the possibility thereof. Moreover, to the extent any damages arising under this Agreement may be covered by insurance, the Consultant 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 Consultant for the City.

VI. INSURANCE

A. Required Policies. Consultant will procure and keep in force the following insurance subject to the conditions below, for the duration of this Agreement:

1. Commercial General Liability Insurance. Comprehensive general liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the performance of the Services with minimum combined single limits of One Million Dollars (**\$1,000,000.00**) for each occurrence and **Two Million Dollars (\$2,000,000.00)** general aggregate.

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

3. Comprehensive Automobile Liability Insurance. Automobile Liability coverage with minimum combined single limits for bodily injury and property damage of not less than **One Million Dollars (\$1,000,000.00)** for any one occurrence with respect to each of Consultant's owned, hired or non-owned vehicles assigned to or used in connection with performance of the Services. If Consultant's insurance does not cover non-owned or hired vehicles, the requirements of this paragraph shall be met with respect to each such vehicle used in connection with performance of the Service, and Consultant agrees to assure compliance prior to allowing use of a vehicle not owned by Consultant for such purpose.

4. Professional Liability Insurance. If Consultant 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 Consultant is engaged, or if the City otherwise deems it necessary, errors and omissions professional liability insurance insuring Consultant 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 Consultant provides a completed Declaration of Independent Contractor Status Form) and other insurance required by applicable law.

6. Excess or Umbrella Requirements. For the coverages required in Sections VI(A)(1-4), Consultant shall provide umbrella or excess coverage written on a "follow-form" basis to the underlying policy and in a coverage amount not less than **One Million Dollars (\$1,000,000.00)**. In so doing, the coverage shall provide complete protection to the City consistent with the liability limits that may be imposed upon the City pursuant to C.R.S. § 24-10-114, as may be amended.

The limits of any insurance required by this Agreement will not limit Consultant'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 Consultant or its officers, employees, agents, subcontractors or business invitees. The insurance policies will be for the mutual and joint benefit and protection of Consultant 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 Consultant deems reasonable for the Services, but in no event greater than **Ten Thousand Dollars (\$10,000.00)**, and Consultant 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. Consultant will identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Consultant changes to "occurrence," Consultant will carry a twelve (12) month tail. Consultant will not do or permit to be done anything that will invalidate the policies.

5. Pollution Coverage. The insurance required by this Agreement will cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, and will not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. If necessary, Consultant will secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims or suits with at least **Two Million Dollars (\$2,000,000)** each occurrence, subject to approval by the City, which approval will not be unreasonably withheld.

6. Evidence of Coverage. Before commencing work under this Agreement, Consultant 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 Consultant provides acceptable such certificates of insurance and endorsements. If the Term extends beyond the period of coverage for any required insurance, Consultant 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. Consultant will include the insurance requirements of this Agreement in all subcontracts. Consultant will be responsible if any subcontractor fails to procure and maintain insurance meeting the requirements of this Agreement.

VII. SALES AND USE TAX.

Unless specifically exempt, all materials provided and equipment used in the performance of Services within the City are subject to City Sales & Use Tax, including services performed on behalf of the City.

A. Consultant Responsible for Tax. Consultant 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 Consultant locates equipment within the City to fulfill this Agreement, Consultant 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 Consultant 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, Consultant 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 Consultant fails to declare the equipment to the City prior to or on the date Consultant locates the equipment within the City, none of the sales and use tax due on the equipment will be allowed as a contract expense.

VIII. NOTICES.

Except for routine communications, written notices required under this Agreement and all other correspondence between the parties will be directed to the following and will be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

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

If to Consultant:

Consultant Contact/Title
Consultant Name
Consultant Address
Consultant City, State, Zip

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

IX. INDEPENDENT CONTRACTOR.

A. Generally. **The relationship between Consultant and the City will be as independent contractors, and neither the City nor Consultant will be deemed or constitute an employee,**

servant, agent, partner or joint venturer of the other. Consultant is obligated to pay federal and state income tax on any money earned pursuant to this Agreement, and neither Consultant nor Consultant'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. Consultant 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. Consultant 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. Consultant has and retains control of and supervision over the performance of Consultant's obligations hereunder and control over any persons employed by Consultant for performing the Services hereunder

E. Non-Exclusivity. Consultant represents that it is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.

F. Assumption of Risk. All Services are to be performed solely at the risk of Consultant and Consultant shall take all precautions necessary for the proper and sole performance thereof.

G. Separate Operations. Consultant will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate and distinct.

X. GENERAL PROVISIONS.

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

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

C. Governing Law; Jurisdiction and Venue; Recovery of Costs. This Agreement will be governed by the laws of the State of Colorado without regard to its conflicts of laws provisions. For all claims arising out of or related to this Agreement, Consultant consents to the exclusive jurisdiction of and venue in the state courts in the County of Adams, State of Colorado. Consultant waives any exception to jurisdiction because of residence, including any right of removal based on diversity of citizenship. The prevailing party in any litigation to resolve a dispute between the parties arising from this Agreement will be entitled to recover from the non-prevailing party court costs, reasonable third party expenses, and reasonable attorney fees incurred in prosecuting or defending such action and enforcing any judgment, order, ruling or award. The prevailing party shall be determined based upon an assessment of which party's arguments or positions could fairly be said to have prevailed over the other party's arguments or positions on major disputed issues at trial. Such assessment should include evaluation of the following: the amount of the net recovery; the primary issues disputed by the parties; whether the amount of the award comprises a significant

percentage of the amount sought by the claimant; and the most recent settlement positions of the parties, which the parties agree shall be admissible for purposes of determining the prevailing party. Any obligation of the City to pay court costs or attorney fees pursuant to this Section shall be subject to the appropriation of funds by the City Council for such purpose.

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

E. COVID-19 and Other Public Health Emergencies. While on City property, Consultant 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. Consultant will not permit any employee who has tested positive for COVID-19, who is exhibiting symptoms of COVID-19, or who has exhibited symptoms within the prior 10 days, to be present at any City facility.

F. Protections for Data Privacy. Consultant shall implement and maintain reasonable security procedures and practices compliant with C.R.S. § 6-1-713.5(2)(a-b) and C.R.S. § 24-73-102(2)(a-b) with respect to any personal identifying information, as defined in C.R.S. § 6-1-713(2)(b) and C.R.S. § 24-73-101(4)(b), disclosed to Consultant in the course of performing the Services. Consultant will notify the City within twenty-four (24) hours of Consultant's determination that a security breach has occurred, as defined in C.R.S. § 6-1-716(1)(c) and C.R.S. § 24-73-103(1)(b), with regard to any personal information, as defined in C.R.S. § 6-1-716(1)(g) and C.R.S. § 24-73-103(1)(g), disclosed to Consultant in the course of performing the Services, and will conduct such investigation and provide such notice as required by law in the event of such breach.

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

H. Time of the Essence. Consultant acknowledges that time is of the essence in the performance of this Agreement. Consultant's failure to complete any of the Services during the Term, or as may be more specifically set forth in an exhibit, notice to proceed, change order, or any approved progress schedule, will be deemed a breach of this Agreement.

I. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement will be strictly reserved to the parties. Any person other than the City and Consultant will be deemed to be only an incidental beneficiary under this Agreement.

J. No Waiver. The waiver of any breach of a term of this Agreement, including the failure to insist on strict compliance or to enforce any right or remedy, will not be construed or deemed as a waiver of any subsequent breach of such term; any right to insist on strict compliance with any term; or any right to enforce any right or remedy with respect to that breach or any other prior, contemporaneous, or subsequent breach.

K. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or Consultant on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Paragraph headings used in this Agreement are for convenience of reference and will in no way control or affect the meaning or interpretation of any provision of this Agreement.

L. Severability. A holding by a court of competent jurisdiction that any term of this Agreement is invalid or unenforceable will not invalidate or render unenforceable any other term of this Agreement.

M. Acknowledgement of Open Records Act. The City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and this Agreement and any related documents are subject to public disclosure. The City will take reasonable steps to keep confidential only documents actually prevented from disclosure under the Colorado Open Records Act (“CORA” or “Act”), C.R.S. § 24-72-201, *et seq.*, which efforts may include notifying the Consultant of a CORA request and allowing the Consultant to take steps to prevent disclosure, where and when it is reasonably possible to do so. **The Consultant will indemnify and hold the City harmless from any claims arising from the release or inadvertent disclosure of confidential or proprietary information, and from any claims arising from the withholding, or release of documents not protected from disclosure under the Act.**

N. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement for the parties and to bind the parties to its terms. The signatories represent and warrant that each has legal authority to execute this Agreement for the party he or she represents and to bind that party to its terms.

O. Liability of City Representatives. All authorized representatives of the City are acting solely as agents and representatives of the City when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the City

P. Counterparts; Execution. This Agreement may be executed in any number of counterparts, each deemed to be an original, and, taken together will constitute one and the same instrument. Signature pages may be executed via “wet” signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.

Q. Entire Agreement; Modification; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and, except as expressly provided, may not be modified or amended except by validly executed written agreement of the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions

of this Agreement. This Agreement will be binding upon, and will inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

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

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

CITY OF COMMERCE CITY

Name, Title Based on Amount
Select Department

ATTEST:

APPROVED AS TO FORM:

Dylan A. Gibson, City Clerk

Matt Hader, Interim City Attorney

CONSULTANT NAME

Signature

Printed Name, Title

EXHIBIT A

Scope of Services

CONSULTANT: [Consultant Legal Name]

GENERAL DESCRIPTION: [Insert general description of Professional Services. This can range anywhere from a sentence to multiple pages, based on the Scope of Services in the RFP and the Consultant's Proposal].

COST: Under no circumstances shall the compensation due and owing to the Consultant for performance of the Services described herein exceed the rates set forth herein.

[Insert detailed, comprehensive rates]

MATERIALS AND EQUIPMENT TO BE USED: [add if needed].

APPLICABLE STANDARDS, STANDARDS, AND GUIDELINES: [add if there are any; delete if there aren't].

MISCELLANEOUS TERMS, CONDITIONS, OR OTHER SPECIFICS: [add if there are any; delete if there aren't].

EXHIBIT B

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

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

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

I am a United States citizen, or

I am a Permanent Resident of the United States, or

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

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

Signature

Date

INTERNAL USE ONLY

Valid forms of identification:

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

---current Colorado identification card

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

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

---Native American tribal document



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

EQUIPMENT DECLARATION

Company: _____

Date: _____

Address: _____

State and Zip: _____

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

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