

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2023 (“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 EST, INC. an Oklahoma corporation whose principal business address is 615 Hudson Avenue, Oklahoma City, OK 73102 (“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 Design and provide Construction Management of medians on Highway 2 between E. 72nd Avenue and E. 112th Avenue (a stretch of approximately 7 miles), as set forth in Exhibit A – “Scope of Services,” attached and incorporated by reference (“Services”). Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services. The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to Contractor without penalty. Contractor acknowledges that this Agreement does not grant any exclusive privilege or right to supply the Services to the City.

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

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

#### D. Format and Ownership of Deliverables.

1. Format. Contractor will provide all reports, surveys, maps, plans, drawings or photographs, or any other materials that lend themselves to production in electronic format (“Deliverables”) to the City in both hard copy and electronic formats acceptable to the City, unless otherwise directed by the City in writing. Contractor’s failure to do so will constitute a material breach of this Agreement. Contractor will consult with the City to determine acceptable electronic formats before beginning the Services. All Deliverables and other tangible materials produced by Contractor pursuant to this Agreement will at all times be considered the property of the City. 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 Contractor's obligations and liabilities will not be diminished by reason of any approval or review by the City. Contractor represents that the Services provided: (i) will be performed in accordance with the applicable professional standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions faced by Contractor, and (ii) will be performed in a timely manner as required by the Agreement and performed and supervised by qualified personnel. Contractor further represents that all application software developed or implemented by Contractor under this Agreement, when used in accordance with its associated documentation, shall not infringe upon the rights or marks of a third party. Lastly, Contractor represents that it is not a party to nor subject to any agreement or order which would limit, prevent or restrict its performance of any Services.

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

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

H. 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.

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

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

K. 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.

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

M. 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 **\$576,652.00**. The compensation established by this Agreement includes all of Contractor's costs and expenses to fully perform the Services and other obligations of this Agreement, for the Term, as defined below. The City shall not be obligated to pay any late fees or interest. The City will not consider or be obligated to pay or reimburse Contractor any other charges or fees and Contractor will not be entitled to any additional compensation or reimbursement.

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

C. Representation. By submitting an invoice, Contractor warrants that: (i) the work covered by previous invoices is free and clear of liens, claims, security interests or encumbrances, except for any interest created by retainage; and (iii) no work covered by the invoice is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by

Contractor or any other person or entity. Contractor shall not include in its invoice any billing for defective work or for work performed by subcontractors or suppliers if it does not intend to pay the subcontractors or suppliers for such work.

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

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

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

G. Changed Conditions. Contractor agrees that, by careful examination, it is satisfied as to the nature and location of the Services, the conformation of the ground, the character, quality, and quantity of the materials to be encountered, the character of equipment and facilities needed before beginning and for the Services, the general and local conditions, and all other matters, which can in any way affect the performance of the Services. Contractor specifically waives any claim for additional compensation for any changed condition arising out of any one or more of the following, unless such changed condition is caused in whole or in part by acts or omissions within the City's control: (1) a physical condition of the site of an unusual nature; (2) any condition differing materially from those ordinarily encountered and generally recognized as inherent in work or services of the character and at the location provided for in this Agreement; or (3) any force majeure.

### **III. TERM AND TERMINATION.**

A. Term. The term of this Agreement will be from the Effective Date until the completion and acceptance of the Services ("Term").

B. Termination

1. For Convenience. Contractor agrees that the City may terminate this Agreement without cause at any time for convenience of the City. Contractor assumes all risks of being terminated for convenience, whether such risks are known or unknown, and acknowledges that the City's decision to terminate for convenience lies solely within the City's own discretion. Contractor represents that it is a sophisticated business, has entered into the Agreement voluntarily, and has calculated all business risks associated with this Agreement. In the event of a termination for convenience, the City will provide written notice of termination to Contractor at least fourteen (14) calendar days prior to the effective date of termination. Contractor expressly agrees to and assumes the risk that the City shall not be liable for any costs or fees of whatsoever kind and nature if termination for convenience occurs before Contractor begins any Services or portion of the Services. Once Contractor has commenced performance of the Services, Contractor expressly agrees that the City shall be liable only for work Contractor satisfactorily completed up to the point of the effective date of the notice of termination, consistent with Section III(C) of this Agreement. The Contractor shall have no claim of any kind whatsoever against the City for any termination for convenience, except for compensation for work completed to the satisfaction of the City.

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

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

a) The Contractor fails or refuses to expeditiously and actively undertake or substantially or timely perform its responsibilities and obligations, or fails or refuses to make adequate progress in performing its responsibilities and obligations under this Agreement, including those stated in the Scope of Services;

b) There is substantial evidence that it has been or will be impossible for the Contractor to perform the Services required due to matters within the Contractor's control such as voluntary bankruptcy, strikes, boycotts, and labor disputes involving the Contractor's employees or closure or suspension of operations by regulatory order of a governmental entity or an order of a court due to violations or infractions by the Contractor or the Contractor's employees;

c) The Contractor has submitted requests for payment under this Agreement that are fraudulent or persistently or flagrantly erroneous or misleading;

d) The Contractor has made an assignment or transfer of, or subcontracts, any or all of its responsibilities and obligations under this Agreement in violation of the terms of this Agreement;

- e) The Contractor fails to obtain, renew, replace, or maintain the insurance coverage required by this Agreement, or causes or is at fault for damage to property or injury to persons that is not covered or not adequately covered by insurance and the Contractor fails to remedy the situation to the satisfaction of the City;
- f) The Contractor fails to obtain or properly and timely maintain any financial assurances required by this Agreement;
- g) Any lien is filed against City property because of any act or omission of the Contractor and is not timely discharged, unless the Contractor furnishes to the City such bond or other financial assurance reasonably acceptable to protect the interests of the City;
- h) The Contractor has failed to obtain or maintain any required permit or license, or has utilized personnel or workers not licensed or registered as required by law;
- i) The Contractor has failed to deliver title or warranties or has failed to honor warranties as required by this Agreement;
- j) The Contractor has flagrantly or persistently failed or refused to comply with any applicable laws or City policies, or fails or refuses to rectify any condition or situation in violation of applicable law or City policies;
- k) The Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Contractor's business.

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

C. Effect of Termination.

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

be liable to Contractor for any unperformed Services, anticipated profits, overhead, mobilization or demobilization costs, administrative costs, productivity costs, losses on disposal of equipment or materials, cost associated with the termination of subcontractors, costs associated with purchase orders or purchases, or any other costs or fees of any kind and nature.

4. Upon receipt of a notice of termination, Contractor will:
  - a) Immediately discontinue performance of the Services (unless otherwise instructed in writing);
  - b) Take reasonable actions necessary, or as the City may direct, for the protection and preservation of completed or partial work;
  - c) Provide the City with all drawings, specifications, photographs, data, and other pertinent documents and information relating to work completed or partially completed, in either their original format or such other commercially reasonable format as the City may direct; and
  - d) Cooperate in all respects with the City, which cooperation shall include, but not be limited to, all of the foregoing obligations listed herein, as well as assisting the City during a transition to another contractor for the Services, if applicable.
5. The City may pursue any remedies available at law or equity. Contractor shall be liable to the City for any loss or damage sustained by the City because of failure to perform in accordance with this Agreement.

**D. Contractor's Remedies for Breach.**

1. Contractor may terminate this Agreement for non-payment of sums due under this Agreement except where non-payment is pursuant to the City's rights under this Agreement. Contractor will first provide the City written notice of Contractor's intent to terminate and allow the City thirty (30) days within which to make payment.
2. Notwithstanding any claim of a material breach by the City, Contractor shall not discontinue performance of the Services without the written consent of the City.

**IV. INDEMNITY.**

Contractor will be liable and responsible for any and all damages to persons or property caused by or arising out of the negligent or willful actions or omissions in the performance of the Services by Contractor, its employees, agents, or other persons acting under Contractor's direction or control. Contractor will indemnify and hold harmless the City, as well as its elected and appointed officials, current and former officers and employees, servants, volunteers, agents, attorneys, representatives, insurance carriers, and self-insurance pools ("Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of or a failure to observe any applicable standard of care by Contractor and/or its employees, agents or representatives or other persons acting under Contractor's direction or control. Contractor will include the provisions of this Section in any such subcontracts engaged to perform any part of the Services. The provisions set forth in this Section will survive the completion of the Services and the satisfaction, expiration or termination of this Agreement.

## V. WAIVER OF CONSEQUENTIAL DAMAGES; SUBROGATION

Notwithstanding any provision of this Agreement that may be construed to the contrary, in no event shall the City, including its elected and appointed officials, current and former officers and employees, servants, agents, attorneys, representatives, insurance carriers, and self-insurance pools, be liable to the Contractor for any exemplary, punitive, special, indirect, consequential, remote, or speculative damages arising out of or relating to, in any manner, this Agreement; whether arising in contract, tort, or otherwise, even if Contractor has been informed of the possibility thereof. Moreover, to the extent any damages arising under this Agreement may be covered by insurance, the Contractor agrees to waive all rights of subrogation against the City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected and appointed officials, current and former officers and employees, servants, volunteers, agents, attorneys, representatives, insurance carriers, and self-insurance pools for losses arising from the Services performed by the Contractor for the City.

## VI. INSURANCE

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

1. Commercial General Liability Insurance. Comprehensive general liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the performance of the Services with minimum combined single limits of One Million Dollars (**\$1,000,000.00**) for each occurrence and **Two Million Dollars (\$2,000,000.00)** general aggregate.
2. Products and Completed Operations Insurance. Products and completed operations insurance insuring against any liability for bodily injury or property damage caused by the completed Services, with a combined single limit of at least **One Million Dollars (\$1,000,000)**.
3. Comprehensive Automobile Liability Insurance. Automobile Liability coverage with minimum combined single limits for bodily injury and property damage of not less than **One Million Dollars (\$1,000,000.00)** for any one occurrence with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in connection with performance of the Services. If Contractor's insurance does not cover non-owned or hired vehicles, the requirements of this paragraph shall be met with respect to each such vehicle used in connection with performance of the Service, and Contractor agrees to assure compliance prior to allowing use of a vehicle not owned by Contractor for such purpose.
4. Professional Liability Insurance. If Contractor is an architect, engineer, surveyor, appraiser, physician, attorney, accountant or other licensed professional, or if it is customary in the trade or business in which Contractor is engaged, or if the City otherwise deems it necessary, errors and omissions professional liability insurance insuring Contractor against any professional liability with a limit of at least **One Million Dollars (\$1,000,000.00)** per claim and annual aggregate.
5. Other Insurance. Workers' compensation insurance (unless Contractor provides a completed Declaration of Independent Contractor Status Form) and other insurance required by applicable law.
6. Excess or Umbrella Requirements. For the coverages required in Sections VI(A)(1-4), Contractor shall provide umbrella or excess coverage written on a "follow-form" basis to the underlying policy and in a coverage amount not less than **One Million Dollars (\$1,000,000.00)**. In



so doing, the coverage shall provide complete protection to the City consistent with the liability limits that may be imposed upon the City pursuant to C.R.S. § 24-10-114, as may be amended.

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

**B. Terms of Insurance.**

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

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

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

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

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

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

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

**VII. SALES AND USE TAX.**

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

A. Contractor Responsible for Tax. Contractor is subject to the tax on all purchases, fabrication, manufacture or other production of tangible personal property used, stored, or consumed in performance of the Services.

B. Specific Industry Standard. The Specific Industry Standard for Construction and Contractors (Regulation 20-S.I.15) can be provided upon request by contacting the City's Finance Department, Sales Tax Division, at 303-289-3628, and is available on the City's website at <http://www.c3gov.com/DocumentView.aspx?DID=115>.

C. Equipment. Prior to or on the date Contractor locates equipment within the City to fulfill this Agreement, Contractor will file a declaration describing each anticipated piece of equipment the purchase price of which was two thousand five hundred dollars (\$2,500) or greater, stating the dates on which Contractor anticipates the equipment to be located within and removed from the boundaries of the City and stating the actual or anticipated purchase price of each such anticipated piece of equipment along with any other information deemed necessary by the City. When such declared equipment is located within the City for a period of thirty (30) days or less, Contractor may include sales and use tax calculated on one-twelfth (1/12) of the purchase price of such equipment in the contract amount, in compliance with Section 20-5-T of the Commerce City Sales & Use Tax Code. If Contractor fails to declare the equipment to the City prior to or on the date Contractor locates the equipment within the City, none of the sales and use tax due on the equipment will be allowed as a contract expense.

## VIII. 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:

Michael McGoldrick, PE / CIP Manager  
Public Works  
City of Commerce City  
8602 Rosemary Street,  
Commerce City, CO 80022

If to Contractor:

Paul Jesaitis, PE, / Principal-in-Charge  
EST, Inc.  
1873 S. Bellaire St., Ste. 1101  
Denver, CO 80222

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

## IX. INDEPENDENT CONTRACTOR.

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

B. Representations. Contractor shall make no representation that either it or any of its employees, agents, or representatives are employees of the City for any purposes.

C. No Authority to Bind the City. Contractor does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.

D. Control and Supervision. Contractor has and retains control of and supervision over the performance of Contractor's obligations hereunder and control over any persons employed by Contractor for performing the Services hereunder

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

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

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

## **X. GENERAL PROVISIONS.**

A. Incorporation by Reference. All Exhibits attached to this Agreement are incorporated into this Agreement by reference.

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

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

D. Governmental Immunity. No term or condition of this Agreement will be construed or interpreted as an express or implied waiver of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to -120.

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

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

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

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

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

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

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

L. Acknowledgement of Open Records Act. The City is a public entity subject to the Colorado Open Records Act, ("CORA" or "Act") C.R.S. § 24-72-201 to -205.5, and this Agreement and any related documents are subject to public disclosure. The City will take reasonable steps to keep confidential only documents actually prevented from disclosure under the Colorado Open Records Act, C.R.S. §

24-72-201 -205.5, which efforts may include notifying the Contractor of a CORA request and allowing the Contractor to take steps to prevent disclosure, where and when it is reasonably possible to do so. **The Contractor will indemnify and hold the City harmless from any claims arising from the release or inadvertent disclosure of confidential or proprietary information, and from any claims arising from the withholding, or release of documents not protected from disclosure under the Act.**

M. 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.

N. 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

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.

P. 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.

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

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

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

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

**CITY OF COMMERCE CITY**

\_\_\_\_\_  
Jason Rogers, City Manager  
City Manager's Office

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
John-Patrick Sansom, Assistant City Attorney

**EST, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Paul Jesaitis, PE, Principal-in-Charge

## EXHIBIT A

### SCOPE OF SERVICES

**CONTRACTOR: EST, Inc.**

**LOCATION(S) OF SERVICES:** Design of Median on Highway 2 between E 72<sup>nd</sup> Avenue and East 112<sup>th</sup> Avenue, Commerce City, Colorado

#### **GENERAL DESCRIPTION OF SERVICES:**

Highway 2 was identified within the City of Commerce City as needing safety improvements along the Highway 2 corridor. Design includes approximately seven (7) miles of medians in various roadway widths from East 72<sup>nd</sup> Avenue to East 112<sup>th</sup> Avenue. The design will allow for the construction of these medians in areas of narrow roadway width. Design and installation of medians will be in accordance with the City requirements, codes and the basic specifications. All work shall be completed in accordance with applicable City standards and completed within the agreed upon timeline.

### TASK 1 – DATA COLLECTION

#### **1.1. Initial Tasks, Engineering Research and Project Management:**

- 1.1.1 Conduct a Project Onsite Kick-off Inspection Meeting to walk the length of the Project. This inspection will be attended by members of the consultant's design team and Commerce City staff. Prepare minutes of this inspection meeting
- 1.1.2 Using digital photography, conduct a field inventory and generate a Photo Log of the existing roadways with labels describing what direction and subject, including the date of the photography.
- 1.1.3 Formulate format for plan sheets to be reviewed by Commerce City staff.
- 1.1.4 At the kick off meeting, or shortly thereafter, create and provide a Project Management Plan which outlines an approach for managing the Project (i.e. involved staff, key team positions), including task orders, a schedule, document and agency reviews and other Project needs.
- 1.1.5 Update the Project Schedule in consultation with City Staff. Modifications will be made as necessary with appropriate justification and will be subject to review and approval by the City.
- 1.1.6 Coordinate work activities with other consultants or City staff.

#### **1.2 Design Surveys and Mapping:**

- 1.2.1 Aerial mapping will be required for the Project (One-foot contour intervals). Complete supplemental field surveys to obtain the detail required to design

approach roadways, driveways and pavement widening. Surveys shall be conducted in accordance with the CDOT Survey Manual.

### 1.2.2 Boundary Survey

1.2.2.1 Establish horizontal and vertical control for the Project based on the High-Accuracy Reference Network (HARN) and existing NGS benchmarks resulting in a NAD83 2011 horizontal datum and a 1988 NAVD vertical datum. The section line will be the Project survey line for Highway 2. Establish horizontal control lines for intersecting streets. Establish ties to two or more section corners. Final CAD drawings and spread sheets must include point numbers, state plane coordinates and elevations, bearings & distances between aliquot corners, street names, geodetic coordinates, ground based coordinates, scale factors and convergence angles, etc. Prepare and submit .dwg files for all survey and design drawings. Include a copy of all Monument records used in survey.

1.2.2.2 Prepare a Survey Control Diagram for the Project showing existing monuments that were utilized and newly established monumentation. The Survey Control Diagram will be prepared in accordance with CDOT criteria. Control points established for this survey will be monumented with durable monuments for use during construction, and referenced on the Ownership Map.

1.2.2.3 Provide a mounted, digital color aerial photograph at a scale of 1" = 200' with labels for street names and other significant features.

### 1.2.3 Record copy of Field Survey notes.

**1.3 Topographic Survey** – This scope anticipates utilizing drone technology to perform a new aerial topographic survey, and supplementing this data with additional field information. Cross sections will be obtained at approximate 50' intervals delineating elevations at each edge of pavement, centerline, edge of shoulder, centerline of borrow ditch and top of borrow ditch on each side of the roadway as applicable. Additional spot elevations will be attained on all driveway access points and all other tie-in points. This data will be merged with the existing aerial map. Include the existing visible features as follows:

- Any existing private improvements that lie within the City's existing rights-of-way.
- Manhole and storm sewer inlet invert and rim elevations and sizes, inverts and direction of pipes in manhole. Note sizes of manholes. Determine pipe sizes and flow directions to the greatest extent possible from the surface. For safety, surveying personnel will not be required to enter confined spaces such as manholes and vaults. The marked utilities will subsequently be field surveyed and delineated on the design survey. All visible utility surface appurtenances will be field located and shown on the design survey. Invert elevations will be obtained from all accessible utilities, i.e. storm and sanitary sewers. Traffic control, if required to obtain utility information, will be provided by the contractor.
- Culvert sizes, materials and invert elevations.
- Irrigation ditches.



- Signs, including sizes and types.
- Earthen berms, including top and toe of slopes.
- Edges of pavement, flowline, lip of curb pan, and roadway crown.
- Curbs, gutters and sidewalks, and survey topography at intersections, providing curb return elevations, radius returns, centerline profiles and signal equipment information (where applicable).
- Surface utility evidence, e.g. utility poles, junction boxes, and any signs or markers indicating the location of underground utilities on the Project not identified on the aerial mapping. For the protection of field personnel, Consultant shall provide traffic control for this task, as necessary.
- Horizontal and vertical locations will be completed in accordance with the NAD83 2011.
- Survey geotechnical test hole locations (15 anticipated) and show them on the Project plans.
- Review survey data and incorporate supplemental data into computer database.
- Merge the aerial and supplemental field survey into a single, coordinated base map for design use.

## **TASK 2 – PRELIMINARY DESIGN**

### **2.1 Design Alternatives:**

- 2.1.1 Review median options for the entire length of the project based on available road width and constructability at all locations. Design should consider existing drainage patterns to ensure there will be no need for the construction of new storm sewer.
- 2.1.2 Prepare and host a design charrette at the City’s Municipal Services Center, including City staff, to consider alternatives for medians in Highway 2. The solutions may vary depending on the specifics of any segment of roadway and will consider safety, aesthetic consistency, and constructability, all within the current pavement section.
- 2.1.3 Consultant should prepare alternative median designs (minimum 3) applicable to each of the segments of Highway 2 to include:
  - 2.1.3.1 Typical sections
  - 2.1.3.2 Median details
- 2.1.4 Prepare preliminary cost estimates for alternative designs to enable narrowing of option to no more than two for each segment.
- 2.1.5 Prepare exhibits and host a virtual public meeting to receive feedback from public on design alternatives.
- 2.1.6 Finalization of median design by consultant and City staff with public input.

### **2.2 Preliminary Roadway Plans:**

- 2.2.1 Prepare preliminary plans to include, but not limited to the following items:
  - Title Sheet
  - Standard Plans List
  - Typical Sections

- General Notes
  - Survey Control Diagram and Notes
  - Roadway plans and profiles
  - Cross-sections of the existing ground and proposed roadway template (at 100-foot intervals).
  - Construction phasing typical sections and plans (schematic)
- 2.2.2. Preliminary striping will be shown on the preliminary roadway plan sheets. Signing plans will not be developed until final design.
- 2.2.3. Consult with Commerce City on the appropriate length of deceleration/storage/taper lengths for right-turn lanes.
- 2.2.4 Prepare a preliminary level Opinion of Probable Construction Cost.

### **2.3 Preliminary Utility Coordination:**

- 2.3.1 Send copies of preliminary plans to utility districts and companies to request verification of existing and proposed utility locations shown on the plans per Colorado Subsurface Utility Law (SB18-167) Level D.
- 2.3.2 Identify utility conflicts and potential relocations. Determine locations where utility potholes should be dug to confirm whether conflicts exist or not. Prepare additional services request for utility potholing services once the required number and locations of potholes are known. Utility potholing is not included in the Base Scope of Services. Additional services for utility potholing will be done after the Preliminary Design Review meeting.
- 2.3.3 Before the Preliminary Design meeting, meet with the affected utility companies that will be significantly impacted by the Project, including but not limited to, South Adams County Water and Sanitation District, Xcel Energy and United Power regarding the Project's impacts to their utilities.
- 2.3.4 At the start of the Preliminary Design meeting, a utility coordination session will be held with utility company representatives to review conflicts, determine how the conflicts should be resolved, and determine who is financially responsible for work required to resolve the conflict.
- 2.3.5 A "Memorandum of Design – Utilities" will be prepared to include a list of locations where conflicts exist between utilities and proposed roadway construction and where utility facilities will need to be relocated.

### **2.4 Preliminary Construction Phasing Plans:**

- 2.4.1 Review design plans to determine a logical approach for staged construction.
- 2.4.2 Prepare a schematic construction phasing plan to illustrate possible construction phasing for the Contractor. The plan will include an outline of salient construction tasks to be completed in each phase.
- 2.4.3 Prepare typical section (schematic) showing detours and work areas within the Project right-of-way for various construction phases.
- 2.4.4 Prepare preliminary construction cost estimate for construction traffic control items for inclusion in the preliminary construction cost estimate for the Project.

### **2.5 Signing and Striping Plans:**

- 2.5.1 Show preliminary striping on the preliminary roadway plan sheets.

2.5.2 Include signing and striping items in the preliminary construction cost estimate.

## **2.6 Project Coordination:**

- 2.6.1** Attend regular progress meetings as appropriate. At least three (3) meetings with up to three (3) consultant staff members are included in the scope of work during the preliminary design phase.
- 2.6.2** Prepare and distribute written minutes of meetings required for the Project, including any meetings held with the County, utility companies, and jurisdictional entities.
- 2.6.3** Document time delays, scope of work variations, changes in input from entities and coordinate said documentation.
- 2.6.4** Arrange and attend a Preliminary Design Review meeting with Commerce City staff and other affected parties, as required by Commerce City.
- 2.6.5** Prepare and distribute minutes of the Preliminary Design Review meeting.
- 2.6.6** Make minor revisions to plans as agreed to by the consultant and Commerce City. In general, Preliminary Design Review comments will be incorporated into the plans during final design. There will not be a post-Preliminary Design Review plan submittal as a part of this Scope of Services.
- 2.6.7** Prepare a list of design recommendations to be incorporated into the final plans and submit as an Appendix to the “Memorandum of Design – Roadway”.
- 2.6.8** Prepare monthly reports to Commerce City outlining work completed to date, value added services, actual completion vs. budget completion vs. scheduled completion, and potential additional services requests on the horizon.

## **2.7 Public Coordination:**

- 2.7.1** Update computerized mailing list to include names and addresses of property owners.
- 2.7.2** Arrange for a virtual public open house and collaborate with Commerce City on event date/time.
- 2.7.3** Prepare a meeting announcement for the virtual public open house and submit an original copy of the announcement to Commerce City. Reproduce and mail public open house announcements to those on the computer mailing database.
- 2.7.4** Prepare an advertisement for the virtual public open house. Submit the advertisement to Commerce City for review and distribution via various digital and print media.
- 2.7.5** Prepare exhibits for the virtual public open house. Exhibits will be Word exhibits (data and/or questions), aerial photographs (with and without the proposed roadway superimposed), and other relevant drawings developed during preliminary design.
- 2.7.6** Prepare pdf files of all public meeting exhibits for electronic submittal to Commerce City. PDF files shall be prepared at a size suitable for posting online. City staff shall post information on the City’s website. A pdf index page may be necessary to maintain file sizes that are workable for the public.
- 2.7.7** Attend one (1) public open house meeting. At least three members of the consultant’s staff will attend the meeting.

- 2.7.8 After the public meeting, prepare a report summarizing the notification process, attendance, intent of the meeting, exhibits / handouts, and public comments.
- 2.7.9 Preliminary Design Public Coordination includes up to two (2) meetings with individual property owners or other interested citizens in addition to the referenced public meeting.

### **TASK 3 – FINAL DESIGN**

Following Commerce City review of the preliminary plans and, at the direction of Commerce City, the following final design work tasks will be completed:

#### **3.1 Final Roadway Plans:**

- 3.1.1 Revise preliminary roadway plans based on Preliminary Design Review comments.
- 3.1.2 Prepare Summary of Approximate Quantities.
- 3.1.3 Prepare quantity tabulations for individual items. Anticipated tabulations include construction surveying, removals/resets/adjust items, earthwork, guardrail, concrete items, surfacing, fencing, storm sewers, and others listed in subsequent sections of the Scope.
- 3.1.4 Prepare detail sheets for various miscellaneous Project components.
- 3.1.5 Prepare Project Special Provisions and Standard Special Provisions (e.g. technical specifications) to augment the most recent adopted Colorado Department of Transportation's Standard Specifications for Road and Bridge Construction.
- 3.1.6 Provide Commerce City Engineering Division via electronic link, a list of Final Design deliverables. The list will be a table indicating plan sheet number, plan sheet description, and the AutoCAD file name for each sheet.
- 3.1.7 Prepare an Opinion of Probable Construction Cost based on the Summary of Approximate Quantities. If the use of IGAs or utility cost sharing agreements is anticipated for various Project elements, costs for these items, including each party's tentative payment obligations, will be broken out in the Project opinion of probable construction cost.

#### **3.2 Final Utility Coordination:**

- 3.2.1 Once the additional services for utility potholing are performed (soon after the Preliminary Design Review) and the conflict locations are verified per Colorado Subsurface Utility Law (SB18-167) Level D, Contractor will conduct a Utility Coordination Meeting. All affected utility companies shall be invited to the meeting. The purposes of the meeting will be to:
  - Review conflicts
  - Confirm how the conflicts should be resolved
  - Confirm who is financially responsible for work required to resolve the conflict
  - Confirm which portions of the work will be performed by Utility Company versus City Contractor forces
  - Confirm the duration or expected completion date of the utility work and the advance notification time requirements.
- 3.2.2 Conduct field reviews with utility owners as required.

- 3.2.3 Revise plans to reflect input from utility owners at the Utility Coordination Meeting and field reviews.
- 3.2.4 Prepare Utility Clearance Letters listing specific utility work elements that the Contractor shall perform, specific utility work elements that the utility owner shall perform, the duration or expected completion date of the utility work, and advance notification time requirements.
- 3.2.5 Submit the letters to the utility companies requesting their signature and return of the letters.
- 3.2.6 Prepare a utility specification listing all utility owners adjacent to the Project and the provisions of the “Utility Clearance Letters”.

### **3.3 Construction Traffic Control Plans and Quantities:**

- 3.3.1 Prepare detailed recommended construction traffic control plans showing suggested construction phasing, work zone locations, temporary striping, construction signing and other construction traffic control devices following guidance from the most recent adopted version of the Manual on Uniform Traffic Control Devices (MUTCD).
- 3.3.2 Prepare recommended traffic control and phasing notes sheet. Include an outline of salient construction tasks to be completed in each phase.
- 3.3.3 Prepare Tabulation of Suggested Traffic Control Devices, and Tabulation of Contractor Traffic Control Pay Items.

### **3.4 Final Signing and Striping Plans:**

- 3.4.1 Prepare signing and striping plans for the Project at 1” =50’ scale (1” =100’ on 11” x 17” sheets). Plans will show striping layout for permanent roadway striping, existing and proposed sign locations, and proposed sign sizes and codes.
- 3.4.2 Prepare tabulation of signs.
- 3.4.3 Prepare tabulation of pavement markings.

### **3.5 Final Design Coordination:**

- 3.5.1 Attend regular progress meetings as appropriate. At least three (3) meetings with up to three (3) consultant staff members are included in the scope of work during the final design phase.
- 3.5.2 Prepare and distribute written minutes of meetings required for the Project, including any meetings held with Commerce City, utility companies, and jurisdictional entities.
- 3.5.3 Document time delays, Scope of Services variations, changes in input from entities and coordinate said documentation.
- 3.5.4 Arrange and attend Final Design Review meeting with Commerce City staff and other affected parties, as required by Commerce City.
- 3.5.5 Prepare monthly reports to Commerce City outlining work completed to date, value added services, actual completion vs. budget completion vs. scheduled completion and potential additional services requests on the horizon.
- 3.5.6 Prepare and distribute minutes of the Final Design Review meeting.
- 3.5.7 Make minor plan revisions after the Final Design Review as requested by Commerce City. Submit two sets of plans (22” x 34”), five set of plans (11” x

17”) and seven sets of technical specifications (8.5” x 11”) with Final Design Review comments incorporated (“Post-Final Design Review Plans and Specs”) to Commerce City for approval. Revisions to plans will be made for a period of 4 weeks after the Final Design Review Meeting based on Commerce City staff input and minor modifications required due to right-of-way negotiations.

- 3.5.8** Submit one Record Set of Approved Post- Final Design Review Plans (11” x 17”) and Specifications with a P.E. Seal to Commerce City and one digital copy to be submitted to the City.

### **3.6 Construction Stormwater Discharge and Dewatering Permits:**

- 3.6.1** Prior to the development of any Erosion Control Plans, the consultant will meet with the Commerce City stormwater staff to outline the approach to developing the plans. The consultant will develop the Erosion Control Plans based on direction received at the meeting.

- Consultant will prepare a Stormwater Management Plan (SWMP). The prepared SWMP will identify temporary sediment and erosion controls that are to be used during construction for different contaminants. Following preparation of the SWMP, Commerce City will review the Construction Phasing Plans and traffic control plans which are also prepared by the consultant.

- The consultant will provide Commerce City with “Area of Disturbance” calculations in acres for: 1.) Total Area of Construction; 2.) Total Area of Disturbance; and 3.) Area of Native Grass Seeding. This information will be used, in cooperation with Commerce City, to complete the SWMP.

- The consultant is to include CDOT’s latest Standard Special Provision regarding “Water Quality Control” (i.e. Revision of Sections 101, 107, and 208) in the specifications.

- 3.6.2** Consultant will prepare a Tabulation of “Temporary Erosion & Sediment Controls) (temporary BMP’s) based on the approved “Erosion & Sediment Control Plan” sheets and include the quantities in the Bid Schedule.

- 3.6.3** Include the Commerce City prepared SWMP, and the approved “Erosion & Sediment Control Plan” sheets in the “For Bid” set of plans.

- 3.6.4** If it is determined that a Dewatering Permit is needed for this Project, Contractor will complete the application form and prepare the supporting documentation for a Dewatering Permit as required by the Colorado Department of Public Health Construction Dewatering Discharge Application. Contractor will pay for the filing fee for this permit, if it is determined that it is needed before construction begins. The Contractor will pay the fee permit if the Contractor determines that it is needed during construction, and Commerce City has not already obtained the Dewatering Permit.

- The Project Special Provisions prepared by the consultant will include a requirement that the Contractor transfer the Dewatering Permit to the Contractor’s company before construction

begins, and that the Contractor amend the permit during construction if the Contractor's operations are inconsistent with these statements or any other portion of the permit.

## **PROJECT DELIVERABLES (TASKS 1-3)**

The Engineer shall deliver to the City the designated number of copies of the following documents at appropriate times during the Project, as outlined in this Scope of Services. The Engineer shall provide electronic versions of all deliverables upon request.

### **TASK 1 - DATA COLLECTION:**

- PDF's to be submitted to project team:
  - Minutes of Onsite Kick-off Meeting (Task 1.1.1)
  - Project Schedule (Task 1.1.5)
- One (1) copy of each:
  - Bound Photo Log of existing roadways (Task 1.1.2)
  - Mounted digital color aerial photograph of Project (Task 1.2.1)
  - Survey Notes for HARN Network Coordinate Tie Loop (Task 1.2.2.1) following Colorado Subsurface Utility Law (SB18-167).
  - Field Survey Notes (Task 1.2.3)

### **TASK 2 - PRELIMINARY DESIGN:**

- Two (2) copies each:
  - Median Alternatives (Task 2.1.3)
  - Preliminary Roadway Plans (11"x17") (Task 2.2)
- Two (2) copies each:
  - Memorandum of Design – Roadway (including design criteria) (Task 2.1.1)
  - Preliminary Opinion of Probable Construction Cost (Task 2.2.4)
  - Memorandum of Design – Utilities (Task 2.3.5)
- PDF's to be submitted to project team:
  - Minutes of Meetings and Phone Conversations (Task 2)
- Public Meeting Materials (Task 2.7)

### **TASK 3 - FINAL DESIGN:**

- Two (2) copies each:
  - Final Roadway Plans (11" x 17" plans) and Technical Specifications (Task 3)
  - To include:
    - Title Sheet and Notes
    - Typical Sections
    - Horizontal Control Plans
    - Signing and Striping Plans
    - Roadway Details
- PDF copy each:
  - Opinion of Probable Construction Cost (Task 3.1.7)
  - Stormwater Construction Dewatering Discharge Permit Application (Task 3.6)

- One (1) copy each:
  - Utility Clearance Letters (Task 3.2.4)
  - Final Roadway Plans (11” x 17” plans) and Technical Specifications (Task 3)
  - Original 11” x 17” Final Plans and Technical Specifications (with Post-Final Design Review revisions) (Task 3.5.7)
  - Plans and Technical Specifications with P.E. Stamp (Record Set) (Task 3.5.8)

## **INFORMATION TO BE FURNISHED BY COMMERCE CITY**

Commerce City will furnish the following items at no charge to the consultant:

- Mailing list of citizens to receive public meeting notices.
- Available accident data.

## **TASK 4 - ADDITIONAL SERVICES**

Additional Services are tasks that may be required to be completed as a part of the design work, or during construction, but the need and extent of the additional work is unknown at the time the Scope of Services is being prepared (prior to initiating the work). The following Scope of Services are "best estimates" or are "in anticipation" of the work that may be required.

None of the Additional Services work tasks will be completed without the written authorization of the City Engineer. At the time the need for the Additional Service is determined, the anticipated Scope of Services written herein will be reviewed for appropriateness. At that time, the consultant will advise Commerce City of the adequacy of the anticipated Scope of Services and whether more or less effort is needed. The adequacy of the established budget will also be reviewed. Every effort will be made to complete authorized Additional Services, including revised work scopes, within the established budgets. Should additional work to that is not anticipated herein be requested or determined necessary, Commerce City may authorize additional budget amounts. Should Commerce City choose not to authorize the additional work and budget amounts, the consultant is not obligated to complete additional work beyond the amount previously authorized and approved. All Additional Services work will be performed on a time and expense basis with costs not to exceed the budget amounts authorized by Commerce City. Hourly billing rates current for the period when the work is performed will be the basis for establishing the consultant’s cost.

City. Hourly billing rates current for the period when the work is performed will be the basis for establishing the consultant’s cost.

### **4.1 Additional Right-Of-Way Services:**

- 4.1.1 Prepare title commitments and ownership map for adjacent properties.
- 4.1.2 Prepare right-of-way Tabulation of Properties and right-of-way / easement plan sheets to include these descriptions and exhibits.
- 4.1.3 Complete the acquisition of all additional right-of-way and temporary easements necessary to construct the Project. This task includes but is not limited to conducting appraisals, preparing offer letters, conducting negotiations in good



faith, preparing final legal descriptions and exhibits, coordinating City Council approvals, coordinate and attending real estate closings, and coordinating with the City's legal counsel.

#### **4.2 Utility Potholing:**

- 4.2.1 Upon mutual agreement between the consultant and Commerce City that location of underground utilities is necessary to determine or resolve conflicts, the consultant shall perform the following services upon written notice from Commerce City.
- 4.2.2 Using non-destructive techniques, locate underground utilities on the Project site.
- 4.2.3 Survey the pothole locations.
- 4.2.4 Document the field locations and include the information in an updated Memorandum of Design - Utilities.
- 4.2.5 Modify design plans where field locations show discrepancies with the utility key maps. Detail on the plans the horizontal and vertical location of each utility potholed.
- 4.2.6 The number of potholes excavated will be dependent on locations, timing and budget amount.

#### **4.3 Property Owner / Citizen Coordination:**

From right-of-way research, determine names and addresses of ownerships that will be impacted by the Project construction. Contact the property owners and arrange meetings with them individually to discuss right-of-way and/or access impacts to their property. Document property owner meetings. At the request of Commerce City, develop written responses to letters or other specific comments received from citizens. Send written responses to Commerce City staff for review and forwarding to citizens.

#### **4.4 Water and Sanitary Sewer Line Relocations:**

- 4.4.1 If, during the course of the design work, it is determined that water and/or sanitary lines must be relocated to accommodate the street improvements, water system and/or sanitary sewer relocation plans will be developed by the consultant upon written authorization from Commerce City. The work items to be completed for design of relocated water and/or sanitary sewer lines are as follows:
  - 4.4.2 Prepare a set of plans for review by the South Adams County Water and Sanitation District including the following sheets:
    - Title sheet separate from the roadway plans.
    - Water and/or sanitary sewer system details and notes.
    - Water line and/or sanitary sewer line plan and profile sheets.
    - Sequencing of water line and/or sanitary sewer relocation construction.
  - 4.4.3 Prepare Project special provisions for the water line and/or sanitary sewer relocations and include the standard specifications of the South Adams County Water and Sanitation District.
  - 4.4.4 Prepare construction cost estimates for the preliminary and final design tasks of the water and/or sanitary sewer line design.
  - 4.4.5 All permit and plan review fees will be paid directly Commerce City and are not included in the Scope of Services.

#### **4.5 Miscellaneous Additional Surveys:**

Perform additional design surveys in areas that may require further definition after preliminary design is completed. The surveys should include any existing manmade improvements and landscaping (such as fences, trees and shrubs) that lie within any proposed additional right-of-way and easement parcels so that the appraiser can ascertain what the impacts are to the affected properties. These surveys might also include additional information for driveway relocations, approach relocations or drainage information required for final design.

#### **4.6 Additional Project and Public Coordination:**

- 4.6.1 Attend additional Project progress meetings as requested by Commerce City. Prepare meeting minutes for additional progress meetings.
- 4.6.2 Update computerized mailing list to include names and addresses provided by participants in the last public meeting who were not on the mailing list previously.
- 4.6.3 Arrange for a location for the public open house. Any fees for meeting facilities will be paid directly by the Engineer, as an Additional Service.
- 4.6.4 Prepare a meeting announcement for the public open house and submit an original copy of the announcement to Commerce City. Reproduce and mail public open house announcements to those on the computer mailing database.
- 4.6.5 Prepare an advertisement for the public open house. Submit the advertisement to Commerce City for review and distribution via various digital and print media.
- 4.6.6 Prepare the text for a Variable Message Sign (VMS) message announcing the public meeting. Consultant will provide this text to Commerce City staff, who will post the message on City-owned signs and place the signs along the Rosemary Street Corridor. No fixed-message signs announcing the public open house will be prepared or posted for this Project.
- 4.6.7 Prepare exhibits for the public open house. Exhibits will be word boards (data and/or questions), aerial photographs (with and without proposed roadway superimposed), and other relevant drawings developed during design. Landscape plans will be included.
- 4.6.8 Prepare pdf files of all the public meeting exhibits. PDF files shall be prepared at a size suitable for posting online. Submit to Commerce City for posting on the Commerce City website.
- 4.6.9 Attend one (1) public open house meeting. Three members of the consultant's staff plus a greeter will attend the meeting.
- 4.6.10 After the public meeting, prepare a report summarizing the notification process, attendance, intent of the meeting, exhibits / handouts, and public comments.
- 4.6.11 Final Design Public Coordination includes up to two (2) meetings with individual property owners, homeowner's associations, or other interested citizens in addition to the referenced public meeting. It is assumed that all property owners or their representatives can be met with in the metropolitan Denver area. No travel outside metropolitan Denver area is included in this scope. If Commerce City prefers, the consultant will respond on behalf of Commerce City to up to two (2) letters from such entities in lieu of the meetings. If more such meetings or responses become necessary, they will be performed as Additional Services.

4.6.12 Provide the following deliverables (1 copy of each):

- Public Meeting Announcement
- Newspaper Announcement for Public Meeting
- Pdf files of Public Meeting Exhibits
- Public Meeting Report

#### **4.7 Bid Services:**

- 4.7.1 Prepare the Bid Package, including bid forms, Project Special Provisions, Standard Special Provisions, which will comprise the Contract Documents. Standard Commerce City and CDOT forms and formats will be used for the Contract Documents.
- 4.7.2 Attend the Pre-Bid meeting and prepare the meeting minutes.
- 4.7.3 Prepare addenda to the bid plans and specifications during the advertisement period, as requested by Commerce City.
- 4.7.4 Attend the Bid Opening and prepare bid tabulation for the Project.
- 4.7.5 Provide the following deliverables (PDF's to project team):
  - Bid Tabulation
  - Addenda
  - Plans and Specifications

### **TASK 5 - CONSTRUCTION DESIGN SUPPORT SERVICES (ROADWAY)**

The consultant, on an “on-call” and “regular visit” basis, will perform part-time construction support services during the Project construction period. The consultant’s Project Manager and/or Project Engineer will be designated to serve as the consultant’s representative. The Engineer's personnel will assist Commerce City’s designated full-time Project Manager with the following services:

#### **5.1 Assistance with Bid Services**

The Consultant will:

- Assist with preparation of the Bid Package using CDOT and the City forms and procedures
- Attend the Pre-Bid meeting and assist with bidding questions
- Assist with addenda to the bid plans and specifications during the advertisement period
- Attend the Bid Opening and prepare a summary of bids
- Assist with production and distribution of bid plans and addenda

#### **5.2 Median Reconstruction Inspection Plan**

The Consultant will perform inspection and materials testing in accordance with CDOT Standard Specifications for Road & Bridge and CDOT’s construction manual paying special attention to appropriate plans and specifications for backfill and compaction, curb & gutter, concrete median

cover materials, and landscaping & irrigation. The contractor will assist the City on a daily basis and support the City with any utility coordination and identification of any additional SUE services. The following are some of the critical inspection items that will be facilitated by the contractor:

- Coordination with utility locates
- Lane closures and shoulder closures; inspect traffic control in accordance with plans and MUTCD
- Quality pavement saw cutting and removal while maintaining of shoulder drop-offs
- Boring or cutting in irrigation sleeves and conduit for landscaping
- Possible inlet connections to storm sewer for drainage of median areas
- Subgrade prep for median construction; testing bedding material and compaction.
- Curb and gutter form checks for line and grade including for adequate drainage and aesthetics
- Curb and gutter concrete materials testing per CDOT specifications
- Median backfill, testing and placement per plans and specifications
- Median concrete placement and testing per CDOT specifications
- Inspecting irrigation valves, controllers and connections
- Pre inspecting artwork prior to placement
- Inspection of landscape plantings and drip systems

### **5.3 Utility Coordination**

The Consultant will coordinate in advance with utility companies and account for the construction schedule against the utility companies' schedules as well as the need to complete utility work in proximity to the roadway work.

The Consultant, in cooperation with the contractor, will develop an emergency response plan to avoid and, if necessary, immediately be able to react to a utility strike regardless of time of day. Our team will also arrange weekly utility progress meetings to maintain open and constant lines of coordination.

### **5.4 Traffic Management**

The Consultant will monitor the impact of construction to motorists during peak periods as well as to pedestrian traffic at major intersections. During inclement weather and at night, traffic control devices and pre- warnings will be carefully observed and maintained to ensure they are both safe and clearly visible. The Consultant will also ensure the contractor is providing adequate shouldering or barrier protection for any drop-offs for median excavation or utility work.

The Consultant will work closely with the contractor to review and implement the traffic control plans and continuously monitor them. The consultant will maintain communication with Commerce City and local residents and businesses to keep them informed and safe around the

construction site. The consultant will coordinate schedules and upcoming work with Commerce City and CDOT. During construction activities, the consultant will coordinate work with the contractor to keep travel lanes clear of debris, oil, and equipment during paving operations.

## **5.5 Schedule Management**

The Consultant will check the baseline schedule, conduct reviews of monthly updates, and ensure that schedule revisions are prepared and approved on a timely basis, so the schedule is always up to date. A contractor updated schedule will be required with every pay app as well as when an event causes the schedule to change, so that all parties are aware of schedule impacts. Any changes to materials availability or delivery will also be documented and shown on the schedule, both gains and losses.

In addition, the Consultant will provide interpretation of the plans and specifications, with the preparation of Commerce City requested changes to the plans and specifications, and will review the construction progress and observe whether construction is in general compliance with the plans and specifications. Written minutes of site observation visits, telephone conversations and meetings regarding the Project will be prepared and distributed to the Owner.

Construction services do not include the provision or direction of construction surveyors; do not include materials testing; do not include the preparation of "as-built drawings"; do not include the certification of the Contractor's work to be in compliance with the intent of the plans and specifications. The Engineer will not, at any time, control, direct, or otherwise directly or indirectly supervise the construction operators, the Contractor, subcontractors, Commerce City, or agents or employees of the entities listed above.

Services will be provided at the standard hourly rates for the consultant, current for the period the work is completed. The consultant is not obligated to provide services beyond the budget amount established and approved by Commerce City for these construction observation/design services.

**APPLICABLE STANDARDS, STANDARDS, GUIDELINES:** CDOT Standard Specifications for Road and Bridge Construction, 2022; Current CDOT M&S Standards; City of Commerce City, Engineering Construction Standards and Specification

**EXHIBIT B**



7887 East 60<sup>th</sup> Avenue  
Commerce City, Colorado 80022  
Phone (303) 289-3627

**EQUIPMENT DECLARATION**

Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
State and Zip: \_\_\_\_\_

Date: \_\_\_\_\_

**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: \_\_\_\_\_