

**2019 ROW Landscape Maintenance
PRG-2019-P001**

January 4, 2019

REQUEST FOR PROPOSALS



**City of Commerce City, Colorado
Parks, Recreation & Golf**

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1. INVITATION

The City of Commerce City ("City") is soliciting proposals from qualified vendors ("Respondents") to provide RIGHT OF WAY LANDSCAPE MAINTENANCE ("Services"), as described in this Request for Proposals ("RFP"). The response to this RFP (a "Proposal") should serve as a complete approach to providing the Services. The objective is for Respondents to submit sufficient information to allow the City to select one or more Respondents to provide the Services on a non-exclusive basis and to enter into one or more contracts for a **one (1) year** period with **two (2) potential annual renewals**. The selected Respondent(s) will be expected to enter into a Master Service 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 **Willis Waterhouse, Parks Maintenance Supervisor** in writing at **wwaterhouse@c3gov.com** by **5:00 PM MT on Friday, January 11, 2019**.
- **Proposals must be received by 3:00 p.m. MT, on Friday, January 18, 2019.** Late Proposals will not be accepted.

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

All Proposals shall become the property of the City, will not be returned, and will become a public record. Respondents may request parts of their Proposals to remain confidential by indicating such in the Proposals and on the appropriate proprietary or financial pages. **The City will keep confidential only documents protected from disclosure under the Colorado Open Records Act (the "Act").** An entire Proposal shall not be marked or identified as confidential. **By submitting a Proposal, each Respondent agrees to hold the City harmless from any claims arising from the release of confidential information not clearly designated as such by the Respondent or from the release of documents not protected from disclosure under the Act.**

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

2. SELECTION SCHEDULE /KEY DATES

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

Publication and distribution of RFP:	Friday, January 04, 2019
Question submission deadline:	Friday, January 11, 2019 (5:00 p.m. MT)
Responses to questions posted (anticipated):	Monday, January 14, 2019
Proposal submission deadline:	Friday, January 18, 2019, (3:00 p.m. MT)
Review period (anticipated):	1 week(s)
Interviews (if any) (anticipated):	Week of January 21, 2019
Selection (anticipated):	Friday, January 25, 2019
Respondent submits insurance and other required documentation:	Within ten (10) calendar days of Notice of Intent to Award
Execute contract (anticipated):	Friday, February 22, 2019

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. SCOPE OF SERVICES

General Requirements

The contractor will provide all labor, tools, equipment, and materials to perform routine maintenance and repairs, emergency repairs, testing, and inspection of Right of Way Landscape Maintenance as described in Attachment B “Supplemental Scope of Services”.

The contractor will coordinate with other City contractors as necessary.

All work shall be made in a neat and workmanlike manner, in accordance with the best practices of the trade. All work shall comply in every respect with City and state regulations and laws as well as all applicable code requirements.

The contractor shall also be responsible for ensuring necessary inspections are scheduled and completed satisfactorily. Upon completion of the work, the contractor shall conduct an operating test in the presence of the designated City representative and shall demonstrate that all equipment is operating properly.

Some materials may be supplied by the City. All parts and supplies must be qualified and approved. The contractor shall submit catalog cuts for all new equipment. The contractor will provide all necessary documentation for any work performed.

Work Orders

Additional work outside of programmatic services identified in Attachment B may be authorized on an ad hoc basis and will be initiated by City staff. If the value of the work is over \$500, City staff will initiate a Work Order (see Attachment A). The contractor shall provide an estimate of time and materials as well as an estimated schedule for completion upon evaluation and discussion with City staff. The contractor shall only repair, replace, upgrade or install work that is directed by the City and identified in the Work Order. If there are any questions regarding the work to be performed, the contractor is responsible for contacting the designated City representative and requesting clarification before proceeding.

On Call/Emergency Service

The contractor will be available “on call” on a 24-hour basis for any emergency that may occur, including holidays. Response time to emergencies and routine requests is expected to be timely. 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.

No Minimum Service Requirements

Services shall be provided by the contractor on an as-needed, non-exclusive basis. The City does not represent that it will utilize any contractor's services in any guaranteed amount. No minimum dollar amount or number of Work Orders are guaranteed by the City.

Project Site Cleanliness

The contractor shall leave the work area in a clean state upon completion of the work at the end of each work day. The contractor must remove all debris generated and dispose of it in an appropriate manner.

Safety

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

Contract Requirements

The contractor shall perform all Services in accordance with the executed Master Services Agreement and shall comply with all of its terms and conditions. The Master Services Agreement contains requirements that shall be the contractor's responsibility, including without limitation:

- Insurance;
- Indemnity;
- City Sales & Use Tax;
- Invoice & Payment Terms;
- Licenses & Permits.

Please refer to Attachment A for all contract requirements.

4. PROPOSAL FORM

I. STATEMENT OF QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. Attach separate sheets or attachments as necessary.

1. Respondent Name: _____

2. Trade Name: _____

3. Form of Entity: _____

4. Business Address: _____

5. Primary Contact: _____

Phone Number: _____

Email: _____

6. Year Organized: _____

7. Where Organized: _____

8. How many years has Respondent been engaged in the Landscape Maintenance business under its present name. Please state the names and dates of any previous business names.

9. Has Respondent been terminated from a contract or project in the last five years? Explain. ____

10. Has Respondent been party to litigation related to its work in the last five years? Explain. ____

11. Please identify the number of staff available to work under the contract:

_____ Number of licensed/certified technicians _____ Number of helpers

12. Can Respondent provide 24-hour "on call" emergency coverage? **Yes / No**

13. On-Call Response Time (Fill in Blank and Circle One Time Period)

REGULAR HOURS (M-F, 7:00 a.m. to 5:00 p.m.): _____ MINUTES/HOURS

NIGHT/WEEKEND/HOLIDAY HOURS: _____ MINUTES/HOURS

14. Has Respondent reviewed the draft contract (Attachment A to this RFP) including all insurance requirements? **Yes / No**

List any exceptions to the draft contract or state "None": _____

II. REFERENCES

Reference #1:

Contact Name: _____

Business Name: _____

Business Address: _____

Contact Phone: _____

Contact Email: _____

Work Description: _____

Reference #2:

Contact Name: _____

Business Name: _____

Business Address: _____

Contact Phone: _____

Contact Email: _____

Work Description: _____

Reference #3

Contact Name: _____

Business Name:

Business Address:

Contact Phone:

Contact Email:

Work Description:

III. RATES (Use electronic version of bid sheet)

Bid Sheet										
Victory Crossing 13.274 Acres			104th and Chambers Medians 10.096 Acres			US 85 & Hwy 2 3.524 Acres			112th and Potomac 3.926 Acres	
Turf Maintenance 1.478 Acres	Total		Turf Maintenance .378 Acres	Total		Turf Maintenance 1.662 Acres	Total		Turf Maintenance .287 Acres	Total
Total			Total			Total			Total	
Shrub and Bed Maintenance 5.835 Acres	Total		Shrub and Bed Maintenance 9.718 Acres	Total		Shrub and Bed Maintenance 1.173 Acres	Total		Shrub and Bed Maintenance .809 Acres	Total
Total			Total			Total			Total	
Tree Maintenance	Total		Tree Maintenance	Total		Tree Maintenance	Total		Tree Maintenance	Total
Total			Total			Total			Total	
Native Grass 5.961 Acres	Total		Native Grass 0 Acres	Total		Native Grass .689 Acres	Total		Native Grass 2.83 Acres	Total
Total			Total			Total			Total	
System Wide Programmed Maintenance	Total		System Wide Programmed Maintenance	Total		System Wide Programmed Maintenance	Total		System Wide Programmed Maintenance	Total
Fall Clean Up (Leaf Removal)			Fall Clean Up (Leaf Removal)			Fall Clean Up (Leaf Removal)			Fall Clean Up (Leaf Removal)	
Litter Removal			Litter Removal			Litter Removal			Litter Removal	
Total			Total			Total			Total	
Irrigation	Total		Irrigation	Total		Irrigation	Total		Irrigation	Total
Total			Total			Total			Total	
Grand Total			Grand Total			Grand Total			Grand Total	
Monthly Billing Bids and Grand Total Bid										
Monthly Billing Schedule (based upon base level of service in the Agronomic Calendar)	Victory Crossing Service Area	Northern Range Service Area	Hwy 85 and Hwy 2 Service Area	112th and Potomac	Total	Extra Services	Cost			
June					\$ -	Disease Control (Hourly Price)				
July						Insect Control (Hourly Price)				
August						Add Mulch (Per 1000 sq feet 3 inch lift)				
September						Tree Pruning (Hourly Price)				
October						Irrigation Tech (Hourly Price)				
November						Irrigation Tech (Hourly Price) After Hours				
December						Weed Control (Hourly Price)				
Yearly Total	\$ -	\$ -	\$ -	\$ -	\$ -					

IV. SUBMISSION ACKNOWLEDGEMENT

IN WITNESS WHEREOF, the below-named Respondent acknowledges that all responses and representations contained in this Proposal, including the Statement of Qualifications, References, Rates, and any attachments, are true and correct. The undersigned person affirms that he or she has authority to sign this Proposal on behalf of Respondent.

Respondent Legal Name

Authorized Signature

Printed Name & Title

5. EVALUATION CRITERIA & SELECTION PROCESS

Proposals will be evaluated by the issuing department using the following criteria:

1. Qualifications of Respondent's staff.
2. Respondent's past experience, including reputation for timely, quality performance.
3. Rates.
4. Ability to provide 24-hour "on call" emergency service and timelines for response.

The City may contact any references. 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 references. By submitting a Proposal, Respondent authorizes the City to undertake such investigation as may be necessary to verify the Respondent's qualifications and reputation. Respondent will execute releases as requested by the City to enable the City to obtain necessary information; refusal to execute such releases may result in disqualification. As part of the evaluation process, the City may interview some, but not necessarily all, Respondents.

The City will select the lowest responsive and responsible Bidder, as determined to be the best value by the City in its sole discretion. In addition to the criteria stated above, the City's determination may consider, without limitation, the Bidder's financial resources, ability to comply with all legal and regulatory requirements, ability to perform the Work and complete the Project on time, history of performance, reputation, ability to obtain necessary equipment, data, and facilities, and any other factor deemed important by the City. The City may select multiple Respondents to provide Services as needed by the City.

The City's decision is final and without recourse to any Respondent. The issuance of a Notice of Intent to Award will be conditioned on approval of the selection by: (1) the City Council of the

City of Commerce City if the potential contract price is greater than \$250,000.00; (2) the City Manager if the potential contract price is greater than \$75,000; and (3) the relevant department director if the potential contract price is greater than \$15,000.

Any Selected Respondent(s) will be expected to execute a Master Services Agreement within ten (10) business days of notification of the City's intent to award. Selected Respondent(s) must submit insurance documentation, a completed W-9, and additional documentation as requested by the City before the execution of any contract.

The issuance of this RFP and the receipt and evaluation of Proposals do not obligate the City to select a Respondent or enter into any agreement. No Proposal shall constitute business terms of any eventual agreement except as expressly agreed by the City. The City reserves the right to revise or cancel this RFP and the selection process. Any such revisions will be announced in writing to all Respondents depending upon the timing of the change.

6. 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.

Proposals shall include the following:

1. Completed Proposal Form (form included in this RFP) including:
 - a. Completed Statement of Qualifications;
 - b. Completed Rates Proposal;
 - c. Completed References List; and
 - d. Completed & notarized Submission Acknowledgement;
2. Any relevant information Respondent deems necessary or helpful to the City.

Questions regarding this RFP must be received in writing via email no later than 5:00 PM MT on, Friday, January 11, 2019. 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:

Willis Waterhouse, Parks Maintenance Supervisor
City of Commerce City – Department of Parks, Recreation & Golf
wwaterhouse@c3gov.com

Proposals must be received prior to 3:00 p.m. MT, Friday, January 18, 2019. Proposals shall be submitted in a sealed envelope and plainly marked "Proposal for Right of Way Landscape Maintenance" the outside of the sealed envelope. Proposals must be submitted to:

Willis Waterhouse, Parks Maintenance Supervisor
City of Commerce City
8602 Rosemary Street
Commerce City, CO 80022

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. Proposals not received by the deadline will be considered late and not accepted. Proposals shall not be submitted via facsimile or e-mail.

7. DRAFT CONTRACT

The contract between the successful 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 (Completed Statement of Qualifications, 14). 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.

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("Agreement") is made and entered into effective this ____ day of _____, 201__ (the "Effective Date"), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, Colorado (the "City"), and **CONTRACTOR LEGAL NAME**, a **home state** **Select Entity Type** whose principal business address is **Contractor principal business address** ("Contractor").

WHEREAS, the City desires to retain the services of Contractor, and Contractor desires to provide services to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the sufficiency of which is acknowledged, the parties agree as follows:

I. SERVICES.

A. Services. At the City's direction, Contractor will provide programmatic and non-programmatic right-of-way landscaping and irrigation services for the City on a non-exclusive basis as 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. 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 Contractor 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 executed and authorized as follows: (a) Division Manager (up to \$9,999.00); (b) Department Director (up to \$74,999.00); and (c) City Manager (up to and exceeding \$75,000.00).

2. Invoiced Services. Contractor may perform Services without a Work Order if the scope of Services and the 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 \$9,999.00); (b) Department Director (up to \$74,999.00); and (c) City Manager (up to and exceeding \$75,000.00).

B. Controlling Terms. This Agreement will control if the terms and conditions of any exhibit, attachment, Work Order, or invoice conflict with the terms and conditions of this Agreement. Additional terms and conditions not specifically relating to the Services (such as unnegotiated or form terms included in any Work Order, Invoice, or 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.

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

D. Warranties. Contractor warrants that all work performed under this Agreement will be free from defects in workmanship, equipment, and materials. Upon acceptance of the work, Contractor will transfer the benefit of any applicable manufacturer's warranty to the City.

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

F. Correction of Errors. Contractor will correct any errors or omissions in its work and any work deemed unsatisfactory or unacceptable by the City promptly and for no additional compensation.

G. Subcontractors. Contractor will not engage subcontractors to perform any part of the Services, other than for the provision of goods, materials or supplies, without the City's express written consent.

H. Licenses & Permits. 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.

I. Rate of Progress. Contractor's rate of progress is a material term of this Agreement. At the City's request, Contractor will provide a progress schedule for the performance of any Services subject to the City's approval.

J. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and evaluating criteria and standards. Contractor will cooperate with the City relating to such monitoring and evaluation.

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

L. Non-Exclusivity. The City may engage the services of other persons for the provision of Services that could be performed under this Agreement. Contractor acknowledges that it is not entitled to perform any work except as assigned under this Agreement and is not guaranteed any amount of work.

II. COMPENSATION.

A. Amount. As compensation for performance of the Services and any other obligations under this Agreement, the City will pay Contractor for work actually performed, in accordance with the rates set forth in Exhibit ____ (for programmatic services) and as may be set forth in Work Orders or invoices, provided such rates shall be as set forth in Exhibit _____. The compensation established by this Agreement or any Work Order or invoice shall include all of Contractor's costs and expenses to fully perform the Services and other obligations of this Agreement. The City will not consider or be obligated to pay or reimburse Contractor any other charges or fees and Contractor will not be entitled to any additional compensation or reimbursement.

B. Maximum Amount. The total amount of compensation paid 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. Contractor 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, the applicable Work Order, if any, any costs for which Contractor seeks reimbursement, and the total amount that Contractor claims is due. Contractor will provide verification documentation as requested by the City.

D. Payment. The City will make payment to Contractor within thirty (30) days after receipt and approval of invoices submitted by Contractor. The City's obligation to make payment is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; and (b) satisfactory performance of the Services and conditions of this Agreement. The City may withhold payment of any disputed amounts, and no interest will accrue on any amount withheld pending the resolution of the dispute.

E. 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. Appropriation. This Agreement will neither constitute nor be deemed a multiple fiscal-year debt or financial obligation of the City based on the City's ability to terminate this Agreement. Contractor acknowledges that the City has made no promise to continue to budget funds beyond the current fiscal year and that the City has and will pledge adequate cash reserves on a fiscal-year by fiscal-year basis.

G. Changed Conditions. Contractor specifically waives any claim for additional compensation for any changed condition arising out of any one or more of the following, unless such changed condition is caused in whole or in part by acts or omissions within the City's control: (1) a physical condition of the site of an unusual nature; (2) any condition differing materially from those ordinarily encountered and generally recognized as inherent in work or services of the character and at the location provided for in this Agreement; or (3) any force majeure.

III. TERM AND TERMINATION.

A. Term. The term of this Agreement will be from the Effective Date until [Click here to enter a date](#) ("Term"), unless the Term is extended in by validly executed written amendment for up to two (2) additional years.

B. Termination.

1. Generally. The City may terminate this Agreement without cause if the City determines that such termination is in the City's best interest. The City will effect such termination by giving written

notice of termination to Contractor, specifying the effective date of termination, at least fourteen (14) calendar days prior to the effective date of termination.

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

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

C. Contractor’s Remedies for Breach.

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

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

IV. **INDEMNITY.**

Contractor will be liable and responsible for any and all damages to persons or property caused by or arising out of the negligent or willful actions or omissions in the performance of the Services by Contractor, its employees, agents, or other persons acting under Contractor’s direction or control. Contractor will indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the “Indemnified Parties”), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of 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. **INSURANCE.**

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

1. Commercial General Liability Insurance. Comprehensive general liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the performance of the Services with at least **One Million Dollars (\$1,000,000)** each occurrence.

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

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

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

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

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

B. Terms of Insurance.

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

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

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

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

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

6. Evidence of Coverage. Before commencing work under this Agreement, Contractor will provide certificates of insurance policies indicating that the City is an additional insured and, if necessary, all 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.

VI. 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.

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

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

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

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

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

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

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

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

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

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

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

VIII. NOTICE.

Except for routine communications and invoices directed to a particular department at its regular business address, written notices required under this Agreement and all other correspondence between the

parties will be directed to the following and will be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

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

If to Contractor:

Contractor Contact/Title
Contractor Name
Contractor Address
Contractor City, ST ZIP

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

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

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

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

E. 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.*

F. 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.

G. 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.

H. 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.

I. 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.

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

K. 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.

L. Counterparts. This Agreement may be executed in any number of counterparts, each deemed to be an original, and, taken together will constitute one and the same instrument.

M. 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.

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:

Laura J. Bauer, MMC, City Clerk

Select City Attorney

Recommended for approval:

Name, Title
Select Department

CONTRACTOR NAME

Name, Title

EXHIBIT A

Scope of Services

EXHIBIT B – SAMPLE WORK ORDER

WORK ORDER

This Work Order and any exhibit or attachment are subject to and incorporates all terms and conditions of the Master Services Agreement dated [Click here to enter a date](#).

Contractor shall perform the following Services:

-
-
-
-
- Cost: \$ [Total Cost or Rate for Work Order](#)
- Completion Date: [Click here to enter a date or type number of days](#)

Contractor shall obtain approval from [Name](#) prior to any changes in scope.

[CONTRACTOR NAME](#)

CITY OF COMMERCE CITY

[Name](#), [Title](#)

[Name](#), [Title Based on Amount](#)
[Select Department](#)

Date: _____

Date: _____

Recommended for approval:

[Name](#), [Title Based on Amount](#)
[Select Department](#)



EXHIBIT C

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

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

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

☐ I am a United States citizen, or

☐ I am a Permanent Resident of the United States, or

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

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

Signature

Date

INTERNAL USE ONLY

Valid forms of identification:

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

---current Colorado identification card

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

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

---Native American tribal document



7887 East 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 = $\frac{1}{12}$ 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: _____