

PARTICIPATING ADDENDUM

THIS PARTICIPATING ADDENDUM (this “Agreement”) is made between the **CITY OF COMMERCE CITY**, a municipal corporation of the State of Colorado (the “City”), and **JAGGAER, LLC**, a [REDACTED], whose address is 3020 Carrington Mill Blvd., Suite 100, Morrisville, NC 27560 (the “Contractor”), collectively, the “Parties” and individually a “Party.”

RECITALS

WHEREAS, after a competitive procurement process, NASPO ValuePoint (“NASPO”) through its lead state, the State of [REDACTED], entered into Contract No. [REDACTED], dated [REDACTED] (the “NASPO Agreement”), with the Contractor to provide Hosted Software-as-a-Service and related services. A copy of the NASPO Agreement is attached hereto as **Exhibit A** and incorporated herein by reference, to the extent not inconsistent with this Agreement;

WHEREAS, as a participating entity of NASPO, the State of Colorado entered into Participating Addendum Contract No. [REDACTED], dated [REDACTED], (the “State Addendum”), with the Contractor for computer equipment, peripherals and related services. A copy of the State Addendum is attached hereto as **Exhibit B** and incorporated herein by reference, to the extent not inconsistent with this Agreement;

WHEREAS, the City is permitted to purchase such products and/or services under the NASPO Agreement and the State Addendum, at its discretion and with the assent of the awarded Contractor, and the NASPO Agreement and State Addendum permits its cooperative use by other public entities, including the City; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the NASPO Agreement, State Addendum, and this Agreement; (ii) establishing the terms and conditions by which the Contractor may provide the City with computer equipment, peripherals and related services, as more particularly set forth in this Agreement; and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and agree as follows:

- 1. COORDINATION AND LIAISON**: The Contractor shall fully coordinate all services under this Agreement with designated personnel of the Department of Information Technology (“Department” or “IT”). This Agreement may be used by all departments, offices, and other agencies of the City subject to the any applicable restrictions set forth herein.
- 2. TASK ORDERS AND SERVICES TO BE PERFORMED**: The Contractor agrees to cooperate with the City in the preparation of detailed “Task Orders” in accordance with the Scope of Work, and the rates, contained therein, and according to the rates and prices set forth in the price sheet available for this Agreement through NASPO (“Price List”). Each Task Order shall include a detailed scope of services, level of effort, schedule, rates, and payment schedule, including a “not to exceed” amount, specific to each the Task Order. Task Orders shall be construed to be in addition to, supplementary to, and consistent with the provisions of this Agreement subject to the terms and conditions of the NASPO Agreement and State Addendum. In the event of a conflict between a particular provision of any Task

Order and a provision of this Agreement, this Agreement shall take precedence. A Task Order may be amended by the Parties by a written instrument prepared by the Parties jointly and signed by their authorized representatives. The City may execute Task Orders in its sole discretion, and the City is not required to execute any minimum number of Task Orders under this Agreement. The City shall have no liability to compensate the Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement or a properly executed Task Order. In no event shall a Task Order term extend beyond the Term unless the City has specifically agreed in writing. If this Agreement is terminated for any reason, each Task Order hereunder shall also terminate unless the City has specifically directed otherwise in writing. The Contractor agrees to fully coordinate its provision of services with any third party under contract with the City doing work or providing services which affect the Contractor's performance. The Contractor shall faithfully perform the work in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in this Agreement. The Contractor represents and warrants that all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards; all services and/or deliverables will conform to applicable, agreed upon specifications, if any; and, it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to any deliverable and services free and clear from any and all liens, adverse claims, encumbrances, and interests of any third party. The following Task Order is attached hereto and incorporated herein for a subscription to Jaggaer Contracts+, Jaggaer MBU Multi Business Unit, Jaggaer Sourcing, along with professional services as described in the Statement of Work attached to the Task Order (**Exhibit C**).

3. **TERM:** This Agreement will commence on execution and will expire, unless sooner terminated as provided in this Agreement, co-terminus with the NASPO Agreement (the "Term"). If the term of the NASPO Agreement is extended for any reason, the Term of this Agreement shall be automatically modified to account for that extension, so long as such extension complies with the City's procurement policy.

4. **COMPENSATION AND PAYMENT**

4.1. **Fees:** The City shall pay, and the Contractor shall accept as the sole compensation for services rendered and costs incurred under this Agreement the fees described in the Price List and any duly executed Task Order. Amounts billed may not exceed rates set forth in Price List. The Contractor is responsible for maintaining a current price list of available products and services.

4.2. **Reimbursable Expenses:** There are no reimbursable expenses allowed under this Agreement. All of the Contractor's expenses are contained in costs listed in the Price List. The City will not be obligated to pay the Contractor for any other fees, costs, expenses, or charges of any nature that may be incurred and paid by the Contractor in performing services under this Agreement including but not limited to personnel, benefits, contract labor, overhead, administrative costs, operating costs, supplies, equipment, and out-of-pocket expenses.

4.3. **Invoicing:** The Contractor shall invoice the city in accordance with the provisions of the State Addendum and the issued Task Order.

4.4. Maximum Contract Amount

4.4.1. Notwithstanding any other provision of this Agreement, the City's maximum payment obligation will not exceed **FOUR HUNDRED TWENTY-FIVE THOUSAND FOUR HUNDRED NINE AND 74/100 DOLLARS (\$425,490.74)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement, Task Order, or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in the Price List. Any services performed beyond those in the Price List are performed at the Contractor's risk and without authorization under this Agreement.

4.4.2. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the City, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

- 5. INCORPORATION AND ORDER OF PRECEDENCE:** The NASPO Agreement and State Addendum shall apply to this Agreement to the extent not inconsistent with this Agreement. If any term of this Agreement conflicts with the NASPO Agreement or State Addendum, then this Agreement shall control for all transactions between the City and the Contractor under this Agreement. If there is any conflict between the NASPO Agreement and State Addendum, the State Addendum shall control. All terms defined in the NASPO Agreement and State Addendum shall have the same meaning as defined therein, except for those terms specifically defined differently in this Agreement.
- 6. RIGHTS AND PRIVILEGES:** To the extent provided under the NASPO Agreement and State Addendum, the City shall be afforded the same rights and privileges afforded to the State and shall be the "State," as defined in the NASPO Agreement and State Addendum, for the provisions of the NASPO Agreement and State Addendum that are incorporated herein by reference.
- 7. INSURANCE:** Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in the State Participating Addendum. Contractor shall name the City as an additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of contractor and Subcontractors. All insurance policies, excluding Crime, secured or maintained by Contractor or its Subcontractors in relation to this Participating Addendum shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor of the city, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- 8. INDEMNIFICATION AND DEFENSE:** The City shall be afforded all the rights, privileges, and indemnifications afforded to the State, participating entities, purchasing entities, and its agencies and employees under the NASPO Agreement and State Addendum, and such rights, privileges, and indemnifications shall accrue and apply with equal effect to the City under this Agreement including, but not limited to, the Contractor's obligation to provide indemnification and insurance. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

9. **STATUS OF CONTRACTOR**: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the for any purpose whatsoever.
10. **ASSIGNMENT; SUBCONTRACTING**: The Contractor is authorized to use subcontractors to provide sales and support to the City as authorized by either the City, the Master Agreement, or the State Addendum. The Contractor's subcontractor's participation shall be in accordance with the terms and conditions set forth herein. The Contractor shall not assign any of its rights or obligations under this Agreement without obtaining the City's prior written consent, and any assignment without such consent will be ineffective and void.
11. **TERMINATION**
- 11.1. The City has the right to terminate this Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under this Agreement beyond the time when its services become unsatisfactory to the City.
- 11.2. The City is entering into this Agreement to serve the public interest. If this Agreement ceases to further the City's public interest, the City, in its sole discretion, may terminate this Agreement, in whole or in part, for convenience by giving written notice to the Contractor.
- 11.3. Upon termination of this Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in this Agreement. Upon termination, the City is entitled to take possession of all materials, equipment, tools, and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient.
12. **COLORADO GOVERNMENTAL IMMUNITY ACT**: In relation to this Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*
13. **COLORADO OPEN RECORDS ACT**: Nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S. ("CORA"). In the event of a request to the City for disclosure of confidential materials, the City shall advise the Contractor of such request to give the Contractor the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If the Contractor objects to disclosure of any of its material, the Contractor shall identify to the City the legal basis under CORA for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Contractor agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the City will tender all material to the court for judicial determination of the issue of disclosure. The Contractor further agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss, or costs arising out of the Contractor's intervention to protect and assert its

claim of privilege against disclosure under this Section, including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs, and damages that the City may incur directly or may be ordered to pay.

14. **TAXES, CHARGES, AND PENALTIES**: The City is not liable for the payment of taxes, late charges or penalties of any nature. The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.
15. **NOTICES**: All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, electronic mail, or mailed via United States mail, postage prepaid, if to the Contractor at the address above and to City at the following addresses: Chief Information Officer, Information Technology, City of Commerce City, 7887 East 60th Avenue, Commerce City, Colorado 80022; with a copy to: City Attorney's Office, 7887 East 60th Avenue, Commerce City, Colorado 80022. Notices hand delivered, sent by electronic mail, or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.
16. **GOVERNING LAW; VENUE**: This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances and regulations of the City, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Adams County.
17. **COMPLIANCE WITH ALL LAWS**: The Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules and regulations of the City. These laws, regulations, and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated.
18. **PROHIBITED TERMS**: Any term included in this Agreement that requires the City to indemnify or hold the Contractor harmless; requires the City to agree to binding arbitration; limits the Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be *void ab initio*. Any agreement containing a prohibited term shall otherwise be enforceable as if it did not contain such term or condition, and all agreements entered into by the City, except for certain intergovernmental agreements, shall be governed by Colorado law notwithstanding any term or condition to the contrary.
19. **CITY EXECUTION OF AGREEMENT**: This Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City of Commerce City.

- 20. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.
- 21. EXTERNAL TERMS AND CONDITIONS DISCLAIMER:** Notwithstanding anything to the contrary herein, the City shall not be subject to any provision including in any terms, conditions, or agreements appearing on the Contractor's or a subcontractor's website or any provision incorporated into any click-through or online agreements unless that provision is specifically referenced and incorporated into this Agreement.
- 22. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The Contractor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature under this Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
- 23. ATTACHED EXHIBITS INCORPORATED:** The following attached exhibits are hereby incorporated into and made a material part of this Agreement:

Exhibit A, NASPO Agreement

Exhibit B, State Participating Addendum

Exhibit C, Task Order

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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

Deanne Durfee, Deputy City Attorney

JAGGAER, LLC.

Signature

Printed Name, Title