

**Paradice Pool Repairs  
2024-05-FAC**

**March 18, 2024**

**REQUEST FOR PROPOSALS**



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

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## 1. INVITATION

The City of Commerce City (“City”) is soliciting proposals from qualified contractors (“Respondents”) to repair Paradise Pool, as described in this Request for Proposals (“RFP”). The selected Respondent is expected to remove and replace all pool underground piping, repair and refinish existing play structure, replace concrete sidewalks/decking, replaster all pools, replace perimeter tile, as more fully detailed in the Scope of Services section of this RFP (“Services”)

This RFP provides a general description of services anticipated, submittal requirements, outlines selection criteria and the selection process. A response to this RFP (“Proposal”) should serve as a complete approach to providing the services. Joint submittals are encouraged to ensure the ability to provide all services requested in this scope. Any proposed subcontractors/team members must be identified and their roles clearly defined in the Proposal.

The City intends to execute a contract with an anticipated notice to proceed date of May 17, 2024 with the selected Respondent (“Contractor”) on a non-exclusive basis for a term that encompasses the length of time the Services are anticipated to require, subject to annual appropriation. Any selected Respondent will be expected to enter into a Services Agreement (Attachment A) with the City consistent with the terms of this RFP.

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

- Questions regarding RFP requirements must be received by **Scott Springstead / Facilities Project Manager** in writing at **sspringstead@c3gov.com** by **5:00 PM MT on Friday, March 29, 2024**.
- **Mandatory Job Walk will be held on Tuesday, March 26, 2024, at 10:00 a.m. MT at Paradise Pool, 5951 Monaco Street, Commerce City, Colorado.**
- **Proposals must be received by 12:00 p.m. MT, on Wednesday, April 10, 2024.**

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

## **2. SELECTION SCHEDULE /KEY DATES**

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

Publication and distribution of RFP:	Monday, March 18, 2024
Mandatory Site Walk / Review:	Tuesday, March 26, 2024 (10:00 a.m. MT)
Question submission deadline:	Friday, March 29, 2024 (5:00 p.m. MT)
Responses to questions posted (anticipated):	Wednesday, April 03, 2024
Proposal submission deadline:	Wednesday, April 10, 2024 (12:00 p.m. MT)
Review period (anticipated):	1 week
Selection (anticipated):	Wednesday, April 17, 2024
Respondent submits insurance and other required documentation:	Within ten (10) calendar days of Notice of Intent to Award
Execute contract (anticipated):	Friday, May 17, 2024

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

### 3. COMMERCE CITY INFORMATION

#### Community Context

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



#### About Commerce City

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

## 4. SCOPE OF SERVICES

### Project Goals

Paradise Island Pool at Pioneer Park 5951 Monaco Street, Commerce City, CO, 80022, consists of three pools, a 5,000 square foot zero-depth leisure pool (77,700 gallons) with a large play structure and interactive water features; a river pool with three water slides, a 250 foot lazy river with a variety of sprays and geysers, and lap lanes (204,000 gallons); and a 1,700 square foot toddler pool with zero-depth entry, and interactive water features (23,400 gallons). The pool was originally constructed in 2008 and in the past few years has begun to deteriorate. Currently a third of the underground piping is leaking, features are having to be turned off, and year to year this problem increases. The perimeter ceramic tile on the edges of the pool is continually failing, and the play structure bases are deteriorating causing leakage.

### General Project Scope

Contractor will prepare and deliver the following: replace all underground pool piping, replace all perimeter ceramic tile, remove and refinish play structure then reinstall, repair/replace all pool plaster and sidewalks removed for pipe installation, replaster all pools, and repair any landscaping damaged or removed due to work, all work to be completed per standards listed below. All work shall be completed in accordance with the City's Engineering Specifications and Standards and any other applicable local, state, or national standards and within the agreed upon timeline.

### Project Requirements and Specifications

#### **Excavation:**

All surplus excavated material shall be disposed of by the Pool Contractor legally or as directed by City staff. The Pool Contractor shall perform all excavation of every description and of whatever substances encountered, to the dimensions and depth shown on the Drawings. All excavations shall be made by open cut with an OSHA approved trench. In congested areas, such materials, cannot be stored adjacent to the trench nor used immediately as backfill, shall be removed to convenient places of storage. If any material is creating a public hazard or other unsafe condition, it shall be removed immediately to a storage area. Materials suitable for use as backfill will be hauled to and used in areas where not enough suitable material is available from the excavation. Material unsuitable for use in backfill shall be removed promptly and disposed of by the Pool Contractor. Clear, as stated above, all existing items or structures in the way of the proposed pipeline or structures and excavate as necessary to the lines and grades shown on the Plans. Where pavements or sidewalks are cut they shall be cut by means of a mechanical pavement saw to form true and straight edges which shall in general be either parallel or at right angles with the centerline of the pipe. Excavate pipe trenches to a minimum of 6-inches below the outside bottom of the proposed pipe barrel to provide for the installation of the bedding material. If, in the opinion of the City, the soil at that depth is unsatisfactory as foundation material because it contains unsuitable marl, muck, organic matter, or other unsuitable material, the excavation shall be continued deeper, except if a suitable foundation material is exposed at a lesser depth, further excavation will not be required. If the soil is still unsuitable after the additional excavation as prescribed above, the trench bottom shall be excavated further in one foot increments in accordance with "Trench Overcut", below opened ahead of pipe laying operations at one time unless a greater length of open trench is approved by the City. Trench widths, when measured at a point 12 inches above the top of the pipe, shall provide a 12-inch

maximum clearance on each side, between the outside of the pipe barrel and the face of the excavation, or sheeting if used. Minimum trench width shall provide at least 6-inches clearance on each side, between the outside of the pipe barrel and the face of the excavation, or sheeting if used.

**Backfill:**

Backfilling of pipe trenches will not be allowed until the work has been approved by the City representative, pressure tested, and the City representative indicates that backfilling may proceed. Any work which is covered or concealed without the knowledge and consent of the Owner shall be uncovered or exposed for inspection. Partial backfill may be made to help restrain the pipe during pressure testing, if previously authorized by the City. The Pool Contractor shall backfill all trenches and other excavations made in the process of installing the pipe. They shall maintain the surface of the backfill free from major irregularities. Select backfill material shall be placed under and around the pipe to one foot above the crown in 6-inch layers. Each layer shall be thoroughly compacted to at least 90 percent of maximum density as defined by AASHTO (American Association of State Highway and Transportation Officials) Standard No. T-180, "Moisture-Density Relations of Soils using a 10-lb. (4.54 kg.) Rammer and an 18-in. (457 mm) Drop". The material in the trench may be compacted by either hand tamper or a mechanized power tamper, provided the results obtained meet the continued approval of the Owner. Particular attention and care shall be exercised in obtaining thorough support for the branch of all connection fittings. Care shall be taken to preserve the alignment and gradient of the installed pipe. Backfilling and compacting of material lying above a point two feet above the crown of the pipe and below the finish grade or the surface of the ground, if out of pavement, shall be accomplished in layers not exceeding 9 inches in thickness. Each layer shall be thoroughly compacted with a powered hand tamper or a mechanized power tamper to at least 95 percent of maximum density as determined by AASHTO Specification T-180 or such greater density as may be required by the governing authority over the area in which the work is performed. The Pool Contractor shall exercise proper care to insure that no pipe will be broken or displaced through the use of the type of mechanical compacting equipment he selects. Water shall be added as required to obtain optimum moisture to facilitate compaction, but ponding or inundation of backfill will not be permitted. In the event that sufficient suitable material is not available at any point to properly backfill the trench, the Pool Contractor shall otherwise furnish suitable material.

**General Plumbing:**

Furnish and install all piping, pipe fittings, and valves from the pool fittings to the junctures indicated on the drawings. Make necessary pipe trenching and do necessary back-filling, including sand bedding at 90% compaction, as required for piping and other work as hereunder specified to complete the pool plumbing installation as shown on the drawings. Piping is shown on drawings in diagrammatic form (unless otherwise noted) to indicate work to be done rather than show exact routing and locations. Make use of all data in contract documents, verify against developed field conditions, and install work in an orderly arrangement in a manner to overcome structural and mechanical interference. Piping and necessary valves should be placed such that the pool can be winterized (including all piping and components). All piping and components shall be installed in a manner to avoid freezing, but not too deep that the weight of soil above crushes piping. Also see other divisions for additional pipe trenching requirements. All piping to

and from the pool shall be hydrostatically tested at 25 p.s.i. (pounds per square inch) before any pipe is concealed. Pipe shall be maintained tight at this pressure for a minimum of 24 hours. All piping shall be maintained tight with 5 p.s.i. of pressure throughout the remaining construction period. Pressure Tests: Hydrostatically test all water piping systems. Do not pneumatically pressure test. Conduct tests in accordance with ANSI (American National Standards Institute) B31.1 and as follows: Test piping systems after the lines have been cleaned as herein before specified. Test the piping system at a pressure of 25 p.s.i. with water not exceeding 100 deg. F. Before tests, remove or isolate gages, traps, and other apparatus subject to damage by test pressure. Install calibrated test gage in system to observe any loss of pressure. Close off system and retain required pressure for one hour minimum and then inspect all joints and connections for leakage. Maintain specified pressure in all lines for a minimum of 24 hours. Maintain 5 p.s.i. pressure in all lines throughout the remaining construction period. Each trade should verify the pressure maintenance before and after completion of work to insure piping integrity. All failures shall be satisfactorily repaired and the complete test performed again. Pool Contractor shall log and maintain records of pressure test on site and maintained in Pool Contractors job file. Such logs shall be presented to City representatives upon request. Pressure test gages shall be currently certified as being accurate to within 1 percent of their full scale. Use gages with maximum scale between 1-1/2 and 2 times the test pressure. Factory test prefabricated piping sections and fittings to ensure compliance with this specification and to prove integrity of joints. The Pool Contractor shall furnish all equipment and apparatus required for performing the inspections and tests, except water supplied by City, and shall correct all defects and repeat respective inspections and tests, as required for final approval. Horizontal drainage lines shall be supported to a uniform slope. All piping shall be installed so as to avoid unnecessary turns in order that friction loss may be kept at a minimum. Piping shall be installed in order to prevent air traps. The minimum slope for all suction and return piping shall be a minimum 0.25% pitch.

**Pipe:**

All pipe shall be cleaned of scale, sand, dirt, and rust before installation. The ends of threaded pipe shall be reamed out full size, threads cut with new dies, and not more than two full threads shall be left exposed when the joint is made up. Offsets shall be made with fittings. Pipe shall not be bent at any time. Joints for PVC (polyvinyl chloride) Pipe: PVC pipe shall be cut square with a pipe cutter or a sharp saw. Free the joint of the feathered edged and ream to full size as necessary. Apply a cleaner and a liberal coat of solvent to the outside of the pipe and in the fitting making sure that the coated area is equal to the depth of the fitting socket. Insert the pipe quickly into the fitting and turn the pipe approximately 15 degrees so that the fitting does not push off the pipe. Do not interrupt the solvent welding of the joint once the solvent is applied. Wipe off all excess solvent to prevent weakening of the joints. Be sure that in going to the next joint that the pipe is not twisted, disturbing the last completed joint. Clear, as stated above, all existing items or structures in the way of the proposed pipeline or structures and excavate as necessary to the lines and grades shown on the Plans. Where pavements or sidewalks are cut they shall be cut by means of a mechanical pavement saw to form true and straight edges which shall in general be either parallel or at right angles with the centerline of the pipe. Excavate pipe trenches to a minimum of 6-inches below the outside bottom of the proposed pipe barrel to provide for the installation of the bedding material. If, in the opinion of the City's representative, the soil at that depth is unsatisfactory as foundation material because it contains unsuitable marl, muck, organic matter, or other unsuitable material, the excavation shall be continued deeper,



except if a suitable foundation material is exposed at a lesser depth, further excavation will not be required. If the soil is still unsuitable after the additional excavation as prescribed above, the trench bottom shall be excavated further in one foot increments in accordance with "Trench Overcut", below. Not more than 100-feet of trench shall be opened ahead of pipe laying operations at one time unless a greater length of open trench is approved by the Owner. Trench widths, when measured at a point 12 inches above the top of the pipe, shall provide a 12-inch maximum clearance on each side, between the outside of the pipe barrel and the face of the excavation, or sheeting if used. Minimum trench width shall provide at least 6-inches clearance on each side, between the outside of the pipe barrel and the face of the excavation, or sheeting if used.

### **Grounding and Bonding:**

The Pool Contractor shall be fully responsible for ensuring all the bonding and grounding circuits required from steel reinforcement, grab rails, handrails, dive towers, handicap lift, deck anchors, and all other metal items in or around the pool remains intact or is replaced as needed per NEC (National Electrical Code) article 680. The Pool Contractor shall verify the bonding and grounding systems to the equipment room is in accordance with the requirements of the National Electrical Code, Article 680.

### **Tile:**

Depth marker tiles for the swimming pool walls shall be glazed ceramic 6" x 6" white tile, with 4" black block numerals, frost-proof. Horizontal depth markers on pool deck shall be 6" x 6" white non-skid, with 4" black block numerals, frost-proof. Contrasting tiles near the pool step nosing, near the bench nosing, 12" back from the 5' break line, racing lanes, and targets shall be 2" x 2" unglazed ceramic tile (color to be selected by City). Tiles adjacent to the pool joints shall be 2" x 2" unglazed ceramic tile (color to match pool finish) with a bullnose edge (bullnose edge on joint side of tile). Acceptable tile manufactures for depth and deck markings are In-lays, Inc. or approved equal. All ceramic tile shall be Dal Tile, American Olean, KlinkerSire, or approved equal. All tiles shall be resistant to chemical attack, shall have a water absorption of 0.5% or less, resist fading, and be designed for use in a swimming pool or spa environment. All other tile shall be frost proof glazed ceramic tile on vertical surfaces and frost proof unglazed ceramic tile on horizontal surfaces (unless otherwise noted on the plans or as selected by the Owner), in the size, style, and trim selection specified on drawings. Tile shall be Dal Tile, or approved equal, color selection by Owner. Samples of all tiles to be used in the pool shall be submitted to the City for color selection. All setting and laying of tile, and all materials and labor required for completion of the tile work shall be in accordance with the latest basic specifications issued by the Tile Manufacturer's Association, except as otherwise noted herein or shown on the drawings. All work shall be performed by labor skilled in the trade. Tile shall remain whole and firmly in place. Tile shall be placed flush and even with each other, parallel to the deck surface or coping stones, and shall have clean cuts. Grout lines of tile shall line up unless otherwise approved by the City. Tile shall be placed flush and even with each other within a tolerance of plus or minus one-eighth inch. Provide waterproofing compound to provide watertight finish. All waterproofing, adhesives, tiles, and grouts used in the pool shall provide a water tight finish and shall be suitable for use in freeze/thaw climates. Flexible acrylic Latex Portland Cement Mortar: Mapei – KERABOND/KERALASTIC, white color, two component flexible mortar system conforming to ANSI A118.10 standards or approved equal. Flexible Fast Setting Latex

Hydraulic Mortar: Mapei – KER 318 GRANI/RAPID, white color, two component, flexible latex hydraulic thin-set mortar conforming to ANSI A118.10 standards or approved equal. Sanded Tile Grout: Mapei – KER200 polymer-modified sanded Portland cement grout conforming to ANSI A-118.6 standards or approved equal. Fast Curing Sanded Tile Grout: Mapei – KER 700 Ultra/Color polymer-modified hydraulic sanded tile grout conforming to ANSI 118.6 standards or approved equal.

**Plaster:**

The interior surface of the pool shall receive a finish coat of white cement plaster. The plaster shall consist of a crushed marble aggregate (manufactured from a calcareous base) and is used in combination with white cement to produce an even surface, very hard and impervious to moisture. Alternative finishes, manufacturers, products, and techniques shall be submitted to the City for consideration. Prior to plastering the entire shell, the pool shall be thoroughly cleaned with a 20% solution of muriatic acid. A scratch coat shall be applied with a stiff broom, followed immediately with a finish coat which shall be 3/8" to 1/2" in thickness and shall be troweled into the scratch coat on the rough gunite. It shall be floated to a uniform plane and troweled to a smooth, dense, impervious surface, exercising extreme care to avoid stains. All plaster shall be installed in accordance with the specifications of the National Plaster's Council. No plaster coat shall be applied during rain, and any such material that has been newly placed shall, if necessary, be protected from the rain by means of polyethylene or PVC sheet until the surface has set. No plaster shall be applied during wind. Any plaster coat newly applied shall, if necessary, be protected from the dirt that might be blown on the fresh surfaces using polyethylene or PVC sheet to protect the surfaces until they have set. All plaster surfaces shall be applied by labor skilled in the trade. Plaster finish shall be vacuumed clean before the pool is filled with water. The pool shall be filled with water as soon as practical after plaster has been applied. The plaster finish shall be monitored and wetted for a period not less than 30 days or until the finish has cured. Areas of the finish that are not constantly submerged in water, shall be maintained wet until finish cures such that dry checking (cracking) does not occur. Before the end of the one year warranty period, but after a complete season of use (including winterizing when applicable), the pool surface shall be inspected for cracks and if any are found, they shall be repaired by the plastering contractor.

**Decking:**

Pool Contractor shall place pool deck slab. Pool deck slab shall be placed after the pool Plumbing installation has been completed and shall include the deck expansion joints with polysulfide sealant, as detailed on the pool plan and details (including expansion joints with polysulfide sealant resistant to the effects of chemically treated water between the back of coping and pool deck). Pool Contractor shall install all deck sleeves and anchors for deck mounted pool equipment that was removed during demolition of the original deck. Pool Contractor shall be responsible for exact location and installation requirements. Pool Contractor shall provide footings or thicken deck slabs as required by manufacturer's installation instructions to accommodate deck embeds and anchors. Pool Contractor shall take every practical precaution to prevent concrete from spattering on the tile and coping, including covering same with protective materials. If splash occurs, wash off while still wet, any concrete which appears on these elements. Any damaged or broken tile or material shall be immediately repaired.

General Concrete Specs:     Concrete – Standard Grey  
  Strength – 4500 psi @ 28 Days  
  Water content - .4  
  Slump – 3-5”  
  Air – 5-8%

Pool decking and general walkways shall be non-slip, broom-finished concrete to match existing.

**Play Structure:**

Pool Contractor is responsible for inspection of the existing leisure pool play structure. Pool contractor must field verify all structural support penetration conditions and stability and consult with the original equipment manufacturer for a permanent method of repair or replacement. The Pool Contractor must proceed with repair or replacement as specified by the original equipment manufacturer only after seeking approval from the City. Play structure to be removed, disassembled, and refinished to original manufacturer’s finish. Re-installation should be completed by manufacturer’s specifications.

**Warranty:**

The successful bidder shall guarantee all work performed including but not limited to plaster/exposed aggregate finishes, plumbing, tile and concrete pours against leaking, cracking, failures, and overall water-tightness to the City for the period of one (1) year from the date of substantial completion.

**Operation:**

The successful bidder will assist the City in the initial startup of the pool, this must be completed no later than May 1, 2025. This will include filling the pool to start the curing of the plaster and balance the chemicals, cleaning the pool to remove excess plaster, and verification after pumps have been running that all pipes are not leaking and play structure functions properly.

**Permits and Use Tax:**

The successful bidder will be required to obtain any and all permits. The City will waive all costs associated with a permit review fee, however bidder is responsible for coordination and submission of documents for review. The City will enlist a third party geotechnical engineer to perform inspections on concrete, compaction, and welding. It will be the responsibility of the contractor to schedule these inspections with the consultant. The Contractor shall be responsible for paying the City’s Use Tax. Details of the City’s Use Tax can be found on the City’s website

**Alternates:**

Please provide additional pricing for the following items:

Alternate 1: Replace existing perimeter roping with new rope.

Alternate 2: Replace existing perimeter roping with new perimeter barrier, new barrier to be proposed by bidders keeping the Paradise theme in mind.

Alternate 3: Remove and refinish kiddie pool play structure (buckets). This includes removing the structure, disassemble, refinish per original manufacturer’s finish, repair any deficiencies, and reinstall.

### City Oversight

A designated individual will be responsible for management of the contract for the City (“Project Manager”). The City will provide reasonable assistance to Contractor in the scheduling of meetings, interpretation of policy and procedural requirements, research relating to internal documents, coordination with outside agencies and City staff, but the City’s obligation will not limit Contractor’s obligations to perform the Services. The City will enlist the assistance of a third party consultant, consultant will review all work put in to place for quality and assurance, the consultant will be representing the City to provide a quality product installed properly and will have full authority of the City to accept work or reject work.

### Timeline and Budget

Contractor must complete all deliverables within the agreed-upon schedule and within the limits provided by the executed contract.

Construction to begin September 3, 2024 and must be completed by May 1, 2025.

### City Holidays

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

### Safety

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

### Contract Requirements

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

## 5. PROPOSAL FORM

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

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

Proposals shall include the following items in the order listed:

- A. **Cover Letter:** A cover letter indicating the Respondent's interest and identifying the entity or entities submitting the Proposal. The letter identify the name, address, email address, and telephone number of the person to contact, along with other contact information for those authorized to represent the Respondent. The letter should also include:
  - A signature by a representative of the Respondent authorized to bind the Respondent for the terms proposed.
  - Any criteria expected by the City that Respondent will not provide.
  - Any proposed changes to the draft Services Agreement (Attachment A).
  - Any other information not appropriately contained in the body of the Proposal.
- B. **Cost Proposal:** A financial proposal focused on maximum value, innovation, and cost-effective implementation. The Cost Proposal should include:
  - **Proposal.** A total not-to-exceed fixed fee for labor, equipment, time, materials, and other items necessary to meet the requirements of the Scope of Services and deliverables, including the requirements of the Services Agreement. The fee should include all costs of performing the Services (including without limitation, mileage, travel, equipment, supplies, subcontractor costs, permits, licenses, overhead, profit,

insurance, etc.) Although the City does not anticipate compensating Respondent for any additional items of expenses, any such additional amounts to be charged to the City must be identified in the cost proposal. Final pricing terms will be negotiated as part of the agreement following selection.

- **Detailed Cost Breakdown.** A cost and hourly rate for various job classifications for each task identified in the Scope of Services and the deliverables section of this RFP including an estimate of manpower hours needed to complete the work. All cost assumptions must be clearly documented in this portion of the submittal. A budget for direct expenses, including travel expenses, if any, must be included, but such expenses are not expected to be paid separately. All prices shall be firm and not subject to increase during the period of this contract.
- **Proposed Payment Schedule.** A proposed payment schedule based on pre-established benchmarks. Proposals must show a retainage of at least fifteen percent (15%), payable on completion of all Services (including presentation to the City Council and final delivery of documents). A final payment schedule will be negotiated as part of the agreement following selection.

C. **Approach to Service:** A detailed description of the approach that will be used to deliver the Services and deliverables. The approach should follow the Scope of Services using a format of primary tasks with subtasks to provide context of the requested/proposed item. An example is as follows:

1. Scope Item
  - a. Description
  - b. Expectations
    - i. Meetings
    - ii. Deliverables
  - c. Key Respondent staff to perform the duties

The City is seeking creative and proven techniques. Key issues for Respondent to focus on include, but are not limited to:

- Quality Control and Quality Assurance.
- Experience and expertise of pool repair and building.
- Similar Completed projects with References

D. Proposed Project Timeline: A proposed timeline that identifies milestones, public outreach and elected and appointed official presentations, and a completion date, preferably tied to the proposed payment schedule. The timeline should also include information as to how the project milestones will be achieved for each phase of the timeline. A narrative of the approach that will be used to perform the Scope of Services and deliverables within the timeline must be included.

E. Resume and Qualifications: A description of the history, experience, and qualifications of the Respondent and any proposed subcontractors to perform the Scope of Services and

deliverables. The City expects that proposed personnel and subcontractors will remain assigned to the Services until completion of all deliverables. Include the following:

- Names and addresses of all firms to be involved in the work
- History, size, and structure of the firm(s)
- Identification of the Principal in Charge, the Project Manager, and the roles and responsibilities of each as they relate to the Project. Include relevant experience and copies of resumes of all personnel to be assigned to the work. If any aspect of the project will be subcontracted, please provide the same information for all team members.
- A list of projects currently under contract and being worked on by the Respondent's team.

F. Example of Previous Work: Complete examples of similar deliverables that were completed for other jurisdictions (this will not count towards the maximum page requirement).

G. Affirmative Participation Plans: An outline of affirmative steps that Respondent will take to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (1) placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

H. Potential Conflicts of Interest: List any work that your firm or your proposed sub-consultants are currently performing for the City or for entities within the City.

I. Miscellaneous: Any supplemental information and attachments relevant to the Proposal, Respondent's qualifications, or Respondent's approach. Respondents are encouraged to expand upon the specifications to give additional evidence of their ability to provide the Services.

## 6. SELECTION & INTERVIEW PROCESS

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

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

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

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

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

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

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

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



## 7. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

## 8. METHOD OF SUBMITTAL

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

**Questions regarding this RFP must be received in writing via email no later than 5:00 PM MT on, Friday, March 29, 2024.** 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:

Scott Springstead, Facilities Project Manager  
[sspringstead@c3gov.com](mailto:sspringstead@c3gov.com)

**Proposals must be received prior to 12:00 p.m. MT, Wednesday, April 10, 2024. Proposals shall be submitted in a sealed envelope and plainly marked "Proposal for Paradise Pool Repair" the outside of the sealed envelope OR Proposals shall be submitted via e-mail titled "Proposal for Paradise Pool Repair".** Proposals must be submitted to:

Scott Springstead, Facilities Project Manager  
City of Commerce City  
8602 Rosemary Street  
Commerce City, CO 80022

OR

Scott Springstead, Facilities Project Manager  
[sspringstead@c3gov.com](mailto:sspringstead@c3gov.com)

It is the sole responsibility of each Respondent to ensure its Proposal is received by the City by the date and time stated in this RFP. Proposals not received by the deadline will be considered late and not accepted. Proposals shall not be submitted via facsimile or e-mail.

## **9. DRAFT CONTRACT**

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

## AGREEMENT FOR PROFESSIONAL SERVICES

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

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. 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).]**





**EXHIBIT A**

**Scope of Services**

**EXHIBIT B**



7887 East 60<sup>th</sup> 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: \_\_\_\_\_





OHLSON LAVOIE  
COLLABORATIVE  
www.olcdesigns.com

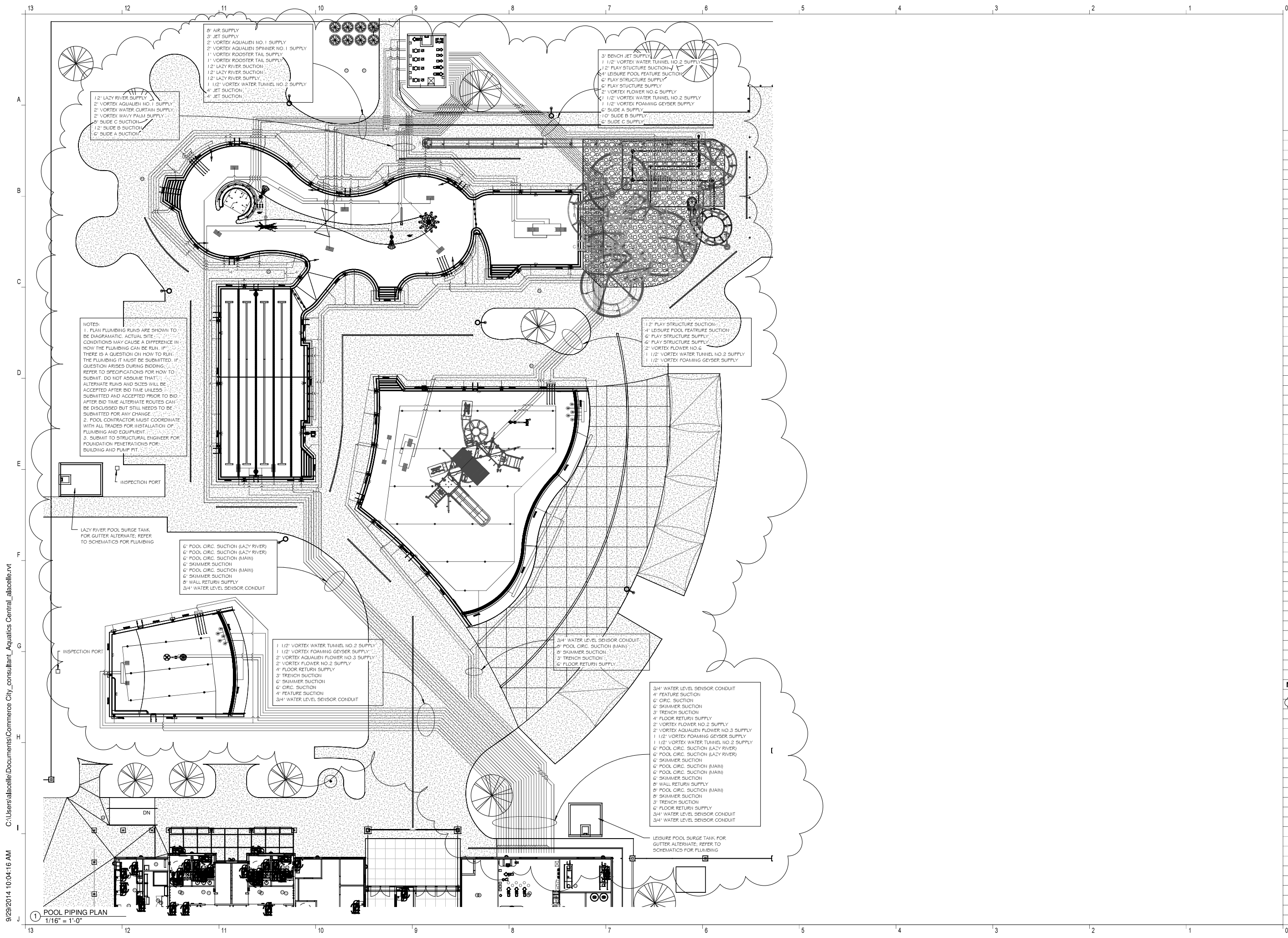
616 E SPEER BLVD  
DENVER, COLORADO  
80203-4213  
T: 303.294.9244

**Outdoor Leisure Pool at Pioneer Park**  
5959 Holly St. Commerce City, CO

NO.	DATE	TITLE/PURPOSE
1	5 August, 2014	BID SET
2	19 August, 2014	Addendum #2
3		CONSTRUCTION SET
4		
5		
6		
7		
8		
9		
10		
11		
12		

SCALE: 1/16" = 1'-0"  
ISSUE DATE: 9/30/2014  
DRAWN BY: AL  
REVD BY: AC  
PROJECT #: 14026  
SHEET TITLE:  
POOL PIPING PLAN

SHEET #  
**AQ302**



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