



**REQUEST FOR PROPOSAL**  
Services

**R21-132 NS**

Date issued: October 15, 2021

**OPERATION AND MANAGEMENT  
OF WESTSIDE COMMUNITY  
CENTER**

**THE CITY OF COLORADO SPRINGS**

**The City of Colorado Springs requests proposals, as detailed in this Request for Proposal (RFP), for**

The City of Colorado Springs seeks responses from qualified firms/organizations interested in entering into an agreement/partnership for the use and programming of the Westside Community Center.

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## SECTION I – PROPOSAL INFORMATION

### 1.0 PROPOSAL INFORMATION

Section I provides general information to potential Offerors, such as proposal submission instructions and other similar administrative elements. This RFP is available on Rocky Mountain E-Purchasing System ([www.rockymountainbidsystem.com](http://www.rockymountainbidsystem.com)). All addenda or amendments shall be issues through the Rocky Mountain E-Purchasing System and may not be available through any other source.

### 1.1 RFP SCHEDULE OF EVENTS

The upcoming schedule of events is as follows:

<u>Event</u>	<u>Date</u>
Issue Request for Proposal	October 15, 2021
Pre-Proposal Conference	October 28, 2021 3:30 pm
This meeting is not mandatory, however all Offerors are encouraged to attend.	
Westside Community Center East Building Cottage A 1628 W. Bijou St Colorado Springs CO 80904	
Cut Off Date for Questions	November 1, 2021 10:00 AM M.S.T.

Questions about the RFP must be emailed in writing and directed at the following email address: A written response to any inquiry may be provided in the form of an Amendment to the solicitation. See 1.7 Amendments. Questions must be received no later than November 1, 2021 10:00 AM M.S.T

DO NOT CONTACT ANY OTHER INDIVIDUAL AT THE CITY OF COLORADO SPRINGS REGARDING THIS SOLICITATION.

**The only acceptable method of submitting questions is by email to the Contracting Specialist. Faxes or physical mail delivery are not acceptable.**

Proposal Due Date                      November 12, 2021                      3:00 PM M.S.T.

## 1.2 SUBMISSION OF PROPOSAL

Proposals are to be submitted electronically on the Rocky Mountain E - Purchasing [www.rockymountainbidsystem.com](http://www.rockymountainbidsystem.com). Please review the submission requirements *well in advance* of submission date and time; and allow for ample time to upload each required document. It is recommended that Offerors begin the submission process at least one (1) day in advance of the proposal deadline.

Offerors are solely responsible to ensure their bid documents are uploaded and submitted correctly, and that a **confirmation number** is obtained upon successful submission.

Customer Support Team for [www.bidnetdirect.com](http://www.bidnetdirect.com) can be reached at 1-800-835-4603.

\*\*\*\*\***NO LATE OFFERS WILL BE ACCEPTED**\*\*\*\*\*

**Date/Time:** Proposals shall be received on or before 3:00 PM M.S.T on November 12, 2021

## 1.3 NUMBER OF COPIES

Offerors shall submit two electronic copies of their proposal. One (1) copy shall be a full proposal to include any confidential or proprietary information. In addition, one (1) copy of your proposal must be submitted for public viewing and should be marked 'PUBLIC'. The purpose of this copy is to meet the requirements of the Colorado Open Records Act and should not contain your proprietary information. Upon submission, all proposal documents shall become and remain the property of the City of Colorado Springs.

## 1.4 SPECIAL TERMS

Please note the following definitions of terms as used herein:

The term "City" means the City of Colorado Springs.

The term "Contractor" or "Consultant" means the Offeror whose offer is accepted and is awarded the contract to provide the products or services specified in the RFP.

The term "Offer" means the proposal.

The term "Offeror" means the person, firm, or corporation that submits a formal proposal or offer and that may or may not be successful in being awarded the contract.

The term "Project" refers to the Westside Community Center R21-132NS.

The term "Request for Proposal" or "RFP" means this solicitation of a formal, negotiable proposal/offer. Any offer that is accepted will be the offer that is deemed by the City of Colorado Springs to be most advantageous in terms of the criteria designated in the RFP.

### **1.5 RFP OBJECTIVE**

The objective of this RFP is to provide sufficient information to enable qualified Offerors to submit written proposals to the City of Colorado Springs. The RFP is not a contractual offer or commitment to purchase products or services. The Offeror may present options and variables to the scope while still meeting the minimum requirements of this solicitation. Innovative proposals/solutions are encouraged and considered in the selection and/or award.

All information included in proposals must be legible. Offeror must initial any corrections and or erasures. Each proposal shall be accompanied by a cover letter signed by an authorized representative of the Offeror. The contents of the proposal submitted by the successful Offeror may become part of any contract awarded as a result of this solicitation.

### **1.6 CONFIDENTIAL OR PROPRIETARY INFORMATION**

If an Offeror believes that parts of an offer are confidential, then the Offeror must so specify. The Offeror must include in bold letters the term "CONFIDENTIAL" on that part of the offer that the Offeror believes to be confidential. The Offeror must submit in writing specific detailed reasons, including any relevant legal authority, stating why the Offeror believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. The City of Colorado Springs will be the sole judge as to whether a claim is acceptable. Decisions regarding the confidentiality of information will be made when requests are made to make the information public. All offers and parts of offers, which are not marked as confidential, will automatically be considered public information after the contract is awarded. The successful offer may be considered public information even though parts are marked confidential.

### **1.7 AMENDMENTS**

Amendments to this RFP may be issued at any time prior to the time set for receipt of proposals. Offerors are required to acknowledge receipt of any amendments issued to this RFP by returning a signed copy of each amendment issued. Signed copies of each amendment must be received on or before the time set for receipt of offers.

The City of Colorado Springs will post all amendments on the Rocky Mountain E-Purchasing System ([www.rockymountainbidsystem.com](http://www.rockymountainbidsystem.com)). It is the Offeror's responsibility to check the website for posted amendments or contact the Contracts Specialist listed to confirm the number of amendments that have been issued.

#### **1.8 WITHDRAWAL OR MODIFICATION OF OFFERS**

Any Offeror may modify or withdraw an offer in writing at any time prior to the deadline for submission of an offer.

#### **1.9 ACCEPTANCE**

Any offer received and not withdrawn shall be considered an offer, which may be accepted by the City of Colorado Springs based on initial submission without discussions or negotiations.

By submitting an offer in response to this solicitation, the Offeror agrees that any offer it submits may be accepted by the City of Colorado Springs at any time within 90 calendar days from the date of submission deadline.

The City of Colorado Springs reserves the right (a) to reject any or all offers, (b) to waive informalities and minor irregularities in offers received, and/or (c) to accept any portion of an offer if deemed in the best interest of the City of Colorado Springs. Failure of the Offeror to provide in its offer any information requested in the RFP may result in rejection of the offer for non-responsiveness.

#### **1.10 PROPOSAL PREPARATION COST**

The cost of proposal preparation is not a reimbursable cost. Proposal preparation shall be at the Offeror's sole expense and is the Offeror's total and sole responsibility.

#### **1.11 AWARD**

The City of Colorado Springs intends to make an award using the evaluation criteria listed in this RFP to determine the best value, considering all factors and criteria in the proposals submitted. Best value means the expected outcome of an acquisition that, in the City's estimation, provides the greatest overall benefit in response to the requirements detailed in the RFP. The City of Colorado Springs reserves the right to reject any or all offers and to not make an award.

## **1.12 PERFORMANCE PERIOD**

The performance period for the project detailed in this RFP shall be proposed by the Offerors and will be established during contract negotiations depending on the type of the contract.

## **1.13 DEBRIEFING**

Offerors not selected may request a debriefing on the selection process as well as discussion of the strengths and weaknesses of their proposal upon receipt of notification that their offer was not selected.

A debriefing may be scheduled by contacting the Contracts Specialist listed above. The Contracts Specialist must receive a written request for debriefing no later than ten (10) calendar days after issuance of a notification that the Offeror's offer was not selected.

## **1.14 SUBSTANTIVE PROPOSALS**

By responding to this RFP, the Offeror certifies (a) that Offeror's proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person, firm, or corporation; (b) that Offeror has not directly or indirectly induced or solicited any other offerors to put in a false or sham proposal; (c) that Offeror has not solicited or induced any other person, firm, or corporation to refrain or abstain from proposing an offer or proposal; (d) that Offeror has not sought by collusion to obtain for themselves any advantage over any other offerors or over the City of Colorado Springs; and (e) that Offeror has not violated or caused any person to violate, and shall not violate or cause any person to violate, the City's Code of Ethics contained in Article 3, of Chapter 1 of the City Code and in the City's Procurement Rules and Regulations.

## **1.15 OFFEROR'S QUALIFICATIONS**

Each Offeror must complete Exhibit 6 – Qualification Statement.

No contract will be awarded to any Offeror who is in arrears to the City, upon any debt or contract, or who is in default, in any capacity, upon any obligation to the City or is deemed irresponsible or unreliable by the City based on past performance.

## **1.16 NON-COLORADO ENTITIES**

If Offeror is a foreign entity, Offeror shall comply with C.R.S. section 7-90-801, "Authority to transact business or conduct activities required," and section 7-90-802, "Consequences of transacting business or conducting activities without authority."



Before or at the time that the contract is awarded to an entity organized or operating outside the State of Colorado, such entity shall obtain authorization to do business in the State of Colorado, designate a place of business herein, and appoint an agent for service of process.

Such entity must furnish the City of Colorado Springs with a certificate from the Secretary of the State of Colorado to the effect that a certificate of authority to do business in the State of Colorado has been issued by that office and is still valid. The entity shall also provide the a certified copy of the designation of place of business and appointment of agent for service of process from the Colorado Secretary of State, or a letter from the Colorado Secretary of State that such designation of place of business and agent for service of process has been made.

### **1.17 PROCUREMENT RULES AND REGULATIONS**

All projects advertised by the City of Colorado Springs are solicited in accordance with the City's Procurement Rules and Regulations. The City's Procurement Rules and Regulations can be reviewed and/or downloaded from the City website [www.coloradosprings.gov](http://www.coloradosprings.gov). The Contracts Specialist may also provide a softcopy of the Rules and Regulations upon request. Any discrepancies regarding conflicting statements, decisions, irregularities, clauses, or specifications will be rectified utilizing the City's Procurement Rules and Regulations, when applicable. It is the Offeror's responsibility to advise the Contracts Specialist listed in this RFP of any perceived discrepancies prior to the date and time the offer is due.

### **1.18 FAIR TREATMENT OF OFFERORS**

The City Procurement Services Division shall be responsible for ensuring the procurement of products, commodities, and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete. If an Offeror believes that a procurement is not conducted in a fair and equitable manner, the Offeror is encouraged to inform the City Procurement Services Manager as soon as possible.

### **1.19 ORDER OF PRECEDENCE**

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order:

- (a) Sections I-IV of this Solicitation
- (b) Statement of Work
- (c) Other Appendices, Schedules, Exhibits, or Attachments

## **1.20 RESERVED**

## **1.21 INTERPRETATION OF PLANS AND SPECIFICATIONS**

Any change to proposal forms, plans, or specifications prior to the opening of proposals will be issued by the City in the form of an Amendment. Certain individuals may be named in the RFP that have authority to provide information, clarification or interpretation to Offerors prior to opening of proposals. Information obtained from persons other than those named individuals is invalid and shall not be used for proposal purposes.

## **1.22 COMBINATION OR CONDITIONAL PROPOSALS**

If an RFP is issued for projects in combination and separately, the Offeror may submit proposals either on the combination or on separate units of the combination. The City reserves the right to make awards on combination or separate proposals to the advantage of the City. Combination proposals will be considered, only when specified.

## **1.23 ANTI-COLLUSION AFFIDAVIT**

The Offeror by signing their proposal submitted to the City is certifying that the Offeror has not participated in any collusion or taken any action in restraint of free competitive bidding. This statement may also be in the form of an affidavit provided by the City and signed by the Offeror. The original of the signed anti-collusion affidavit, if separately required and provided with the RFP, shall be submitted with the proposal. The proposal will be rejected if it does not contain the completed anti-collusion affidavit.

## **1.24 LOGOS**

The City logo is trademarked and property solely of the City and Colorado Springs. Offerors do not have permission to use our logo on any documentation or proposal presentation materials and to do so would be a violation of our trademark. We also prefer your company does not utilize its trademark as to not influence an evaluator's evaluation.

## **1.25 BLACKOUT PERIOD**

The Blackout Period is a specified period of time during a competitive procurement process in which any potential Offeror, or its agent or representative, is prohibited from communicating with any City employee, elected official, or Contractor of the City about the affected procurement. All communications to and from potential Offerors and/or their representatives during the Blackout Period must be in accordance with this RFP's defined method of communication with the designated contact person and the Contracts

Specialist. The Blackout Period will begin upon posting of the solicitation. The Blackout Period will end when the contract is awarded and all conditions precedent to the notice to proceed have been met.

Notwithstanding the foregoing, the Blackout Period shall not apply to:

- Duly noticed site visits and/or conferences for Offerors
- Oral presentations during the evaluation process
- Communications regarding a particular solicitation between any person and staff of the City provided the communication is limited strictly to matters of procedure. Procedural matters include deadlines for decisions or submissions of proposals and the proper means of communicating regarding the RFP, but shall not include any substantive matter related to the particular procurement or requirements of the RFP.

Violation of this provision will cause the Offerors proposal to be found in violation and may be summarily rejected by the City. Any costs associated with cancellation or termination will be the responsibility of the potential Offeror.

## SECTION II – PROPOSAL CONTENT

### 2.0 PROPOSAL CONTENT

Section II provides instructions regarding the format and content required for proposals submitted in response to this solicitation.

### 2.1 PROPOSAL FORMAT

Offeror's written proposal should include concise, but complete, information, emphasizing why the Offeror is best or best qualified to provide the required services. The Offeror's written proposal should include the information in the format outlined below and must be limited to no more than twenty-five (25) pages. **A page shall be defined as 8-1/2" x 11"; single sided, with one-inch margins, and a minimum font of Times New Roman 10.** The only exception to the 8-1/2" x 11" paper size is the proposed project schedule. It may be submitted on 11" x 17" paper. Each 11" x 17" page for the schedule shall be counted in the overall page limitations above. Each section of the proposal should be labeled to clearly follow the requirements sections identified in this this section of the RFP. The following listed Exhibits must be filled out and returned with the proposal and are not counted against the page limit:

- Exhibit 1 Proposal Certification
- Exhibit 3 Exceptions
- Exhibit 4 Minimum Insurance Requirements
- Exhibit 6 Qualification Statement
- Acknowledged Addendum(s) if issued

### 2.2 COVER LETTER

The cover letter shall be no more than three pages. The cover letter shall contain at least the following information.

- A. RFP Number and Project Name.
- B. Statement that the Offeror is qualified to perform the work.
- C. Certification Statement that the information and data submitted are true and complete to the best knowledge of the individual signing the letter.
- D. Name, telephone number, email address, and physical address of the individual to contact regarding the proposal.
- E. The signature of an authorized principal, partner, or officer of the Offeror.

## **2.3 PROPOSAL CERTIFICATION**

The Offeror must fill out and submit Exhibit 1 with its Proposal.

## **2.4 ORGANIZATIONAL BACKGROUND AND OVERVIEW**

The Offeror must provide a brief history and overview of its company and its organizational structure, with special emphasis on how this project will fit within that structure. Additionally, please include your organizational mission, values, and efforts commitments around Equity, Diversity, and Inclusion (“EDI”). Also, include principal place of business location(s), office locations, and size of firm.

## **2.5 BUSINESS PLAN/PROJECT APPROACH**

In this section, submit a comprehensive business plan/project approach for the services being provided. At a minimum, include a detailed project approach, timeline for implementation, what will be needed from the City of Colorado Springs to succeed, and resumes of the key personnel or executive officers. Additional consideration will be given to proposals that provide any form of financial return to the City or provide an opportunity for greater capital investment in the facility itself.

## **2.6 PROGRAMS AND SERVICES MATRIX**

In this section, provide a matrix of proposed programs and services for the site. For each program or service listed, please include information regarding frequency offered, staffing model (including number needed and type such as full-time, part-time or volunteer), fee or free, evaluation methodology, and target audience. While not all programs and services may be fully defined at the time of proposal, there should be enough detail provided to illustrate the depth and breadth of opportunities available to the community. Examples of program and service areas include but are not limited to recreation, health and wellness, essential, community access and engagement, special events, etc.

## **2.7 REFERENCES**

Please provide a contact list of five (5) references with organizations listing specific individuals, their contact telephone numbers and email addresses. References will be checked and should demonstrate that it successfully provided services/products that are the same or similar to those required in the RFP.

## **2.8 PROPOSAL PRESENTATION**

Presentation is an important factor. Offerors should provide a highly professional product, which is complete, accurate, easily understood, and effectively

presented.

## **2.9 FINANCIAL STATEMENTS**

Please include actual financial statements for your organization for the previous five years. Please mark this information as confidential. This information will remain confidential and cannot be released by the City.

## **2.10 EXCEPTIONS**

All Offerors must complete Exhibit 3, Exceptions Form and return it with their proposal. Some terms and conditions are not negotiable. Exceptions may be grounds for rendering the proposal unacceptable without further discussions.

## **2.11 INSURANCE REQUIREMENTS**

All Offerors must complete Exhibit 4, Minimum Insurance Requirements and return with their proposal. Lack of responsiveness in this area may be grounds for rendering the proposal unacceptable without further discussions.

## **SECTION III – EVALUATION FACTORS**

### **3.0 EVALUATION AND AWARD**

Section III provides information regarding evaluation criteria and scoring. It also includes information regarding proposal selection and award of the resultant contract.

### **3.1 EVALUATION CRITERIA**

The following criteria are listed in order of importance that will be used in the evaluation of proposals.

#### **3.1.1 BUSINESS PLAN/PROJECT APPROACH**

See Section II - Item 2.5

#### **3.1.2 PROGRAMS AND SERVICES MATRIX**

See Section II - Item 2.6

#### **3.1.3 ORGANIZATIONAL BACKGROUND AND OVERVIEW**

See Section II – Item 2.4

#### **3.1.4 REFERENCES**

See Section II – Item 2.7

#### **3.1.5 PROPOSAL PRESENTATION**

See Section II – Item 2.8

#### **3.1.6 EXCEPTIONS AND INSURANCE**

See Section II – Items 2.10 and 2.11

### **3.2 RANKING**

A. The order of ranking or importance in the evaluation shall be as follows:

First: Business Plan/Project Approach  
Second: Programs and Services Matrix  
Third: Organizational Background  
Fourth: References  
Fifth: Proposal Presentation

B. Area Scoring

The score for each area will be determined as follows:

First: Business Plan/Project Approach  
Second: Programs and Services Matrix  
Third: Organizational Background

Fourth: References  
Fifth: Proposal Presentation

### C. Final/Overall Scoring

The final proposal score will be determined by adding the area scoring. The sum of the area scores will be the final/overall score.

Business Plan/Project Approach	50 points
Programs and Services Matrix	40 points
Organizational Background	30 points
References	25 points
<u>Proposal Presentation</u>	<u>5 points</u>
Total Possible Points	150 points

### 3.3 SELECTION COMMITTEE

A selection committee will review all proposals. Through this process, the City will determine which proposals are acceptable or unacceptable. The City will notify, in writing, the Offerors whose proposals are deemed to be unacceptable. Those Offerors offering proposals deemed to be acceptable by the City will be evaluated and scored by the selection committee. This scoring will determine which Offerors are considered to be in the competitive range and may be the basis for an award decision without further steps.

If the selection committee elects not to award based upon evaluation scoring, it may engage in a forced elimination process. To inform this process, it may require oral presentations or interviews with the Offerors considered to be in the competitive range. If oral presentations or interviews are conducted, they may also be scored, or they may simply be considered as information supporting the forced elimination process. The selection committee may request revisions to the proposal from each of the Offerors at the conclusion of the interviews. The intent of the forced elimination process is to reach consensus. The decision will be based on all relevant factors, and based upon perception of best value. The final decision may or may not exactly reflect scoring ranking.

The City also reserves the right to request best and final offers from all Offerors at any point in the proposal evaluation process.

### 3.3 AWARD OF CONTRACT

It is anticipated that there will be negotiations or discussions with Offerors. However, the City reserves the right to award without negotiations or discussions. The City also reserves the right to award a contract not necessarily or merely to the Offeror with the most advantageous price. The City intends to award to the Offeror that demonstrates the best value to the City and the most substantiated ability to fulfill the requirements contained in this Request for Proposal. A contract prepared by the City will be finalized and/or negotiated with the successful Offeror.



In the event a contract cannot be negotiated with the top ranked Offeror, the City may enter into negotiations with the second highest ranked Offeror, or the City may decide to call for new proposals. Immediately after the notice of award, the successful Offeror will begin planning in conjunction with the City of Colorado Springs staff (to be designated by the City) to ensure fulfillment of all its obligations. The successful Offeror may be expected to attend regular meetings as required by the City to assist in the preparation for startup.

## SECTION IV – SPECIAL CONTRACT TERMS AND CONDITIONS

### 4.0 SPECIAL CONTRACT TERMS AND CONDITIONS/SPECIAL SOLICITATION PROVISIONS

#### ADA Standards

#### GENERAL

Contractor acknowledges the City is subject to Title II of the Americans with Disabilities Act (“ADA”) and other laws that prohibit public entities from excluding from participation in, denying the benefits of, or discriminating against qualified individuals with disabilities on the basis of disability in the entity’s services, programs, and activities and agrees to comply with the following requirements as applicable to the goods or services that are the subject of this Agreement.

- 1) Videos for public dissemination must be captioned. This non-inclusive list could include training program videos for the public, for web content or even a museum setting. If the goods or services that are the subject of this Agreement are being purchased by the City to enhance or augment a City program, service, or activity, then the materials must be captioned.
- 2) Digital documents must be properly formatted and accessible. Digital documents intended for public use must meet accessibility guidelines as required by the City’s [Administrative Regulation 2020-02, as it now exists or is amended](#), (examples include: doc, .docx, .xlsx, .pptx, .pdf, .jpg). Exclusions to this requirement can be found on page four (4) of Administrative Regulation 2020-02 and include:
  - a. Blueprints
  - b. Architectural Drawings
  - c. Diagrams displaying information that is also provided in narrative text
  - d. Complex and/or atypical images and diagrams
  - e. Scanned historical publications
  - f. Handwritten correspondence
  - g. Technical drawings
  - h. Site plans, development plans, and maps
  - i. Complex and comprehensive tables and charts

**Note:** Information intended for the public contained in document types excluded under Administrative Regulation 2020-02 must be made available to the City by Contractor in other accessible formats upon request. The City requests that content be delivered in an accessible format regardless of exclusion if possible. More information on document accessibility can be found on the City’s [Accessible Digital Documents Reference Page](#)

- 3) Kiosks purchased for public use must adhere to the City’s adopted [Kiosk Accessibility Standards](#)

- 4) Software Statement of Accessibility from the vendor is required for all purchases of software for programs the public will use.

A certificate of WCAG 2.0 (AA) or higher minimal compliance will be requested and required. In the alternative the City can accept a certificate of 508 compliance. Typically, these are going to be “plug in play” software programs for such things as vendor payments, customer service surveys and citizen requests. [Learn more about the City’s Procurement of Accessible Information Technology policy.](#)

- 5) The City maintains a list of technical resources for other [ADA related Works](#):
  - a. [ADA/City Standards for Public Right of Way for Sidewalks, Protruding Objects and Vertical Clearance](#)
  - b. [Pedestrian Accessibility in the Public Way During Construction](#)
  - c. [ADA Restroom Requirements and Considerations](#)
  - d. [ADA Requirements and Considerations: Dining and Work Surface Requirements](#)
  - e. [ADA Requirements and Considerations: Sales and Service Counters](#)

#### **DOCUMENTATION OF ACCESSIBILITY**

Within 10 days of the City’s written request, Contractor will provide the City with accessibility testing results and/or other written documentation as assurance and verification of the state of accessibility required. Documentation of accessibility as required by the City’s Administrative Regulation 2020-02 and the City’s Accessible IT Procurement policy is considered to be:

- a) A current VPAT (2020), which can be found at <http://www.itic.org/policy/accessibility>, or
- b) A completed copy of the City’s Accessibility Checklist, which can be found at [https://coloradosprings.gov/sites/default/files/accessible\\_it\\_procurement\\_002.pdf](https://coloradosprings.gov/sites/default/files/accessible_it_procurement_002.pdf), or
- c) An independent third-party evaluation from an accessibility consultant.

#### **RESOLUTION OF ACCESSIBILITY MATTERS**

The City, in its sole discretion and at its own expense, may choose to obtain an independent assessment of Contractor’s compliance with these requirements but will not be responsible for doing so. If the City so chooses to obtain an independent assessment, then upon the City’s notice or request to Contractor, Contractor shall:

- 1) Provide a Point of Contact (including name, address, phone number, and email address) specifically to confer with the project manager on accessibility matters.
- 2) Promptly respond to complaints about accessibility made or received by the City related to Contractor’s performance of this Agreement.

## SECTION V – EXHIBITS

### 5.0 EXHIBITS

Exhibit 1	Proposal Certification
Exhibit 2	Sample Contract
Exhibit 3	Exceptions
Exhibit 4	Minimum Insurance Requirements
Exhibit 5	Scope of Work and Appendices
Exhibit 6	Qualification Statement
Exhibit 7	Evaluation Score Sheet

**EXHIBIT 1 PROPOSAL CERTIFICATION**

Check or Mark the space after each number to indicate compliance.

1. \_\_\_\_\_ Address of Offeror's Principal Place of Business:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Does Offeror have an established office or facility in Colorado Springs?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, indicate address below if different than Principal Place of Business.

Colorado Springs Facility - Year established \_\_\_\_\_

Address of Colorado Springs Facility:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Percent of Work to be Performed from Principal Place of Business? \_\_\_\_\_

Percent of Work to be Performed from Colorado Springs Facility? \_\_\_\_\_

2. \_\_\_\_\_ Indicate your ability to provide a certificate of insurance evidencing the required coverage types and limits specified in Minimum Insurance Requirements Exhibit. (The certificate of insurance must reflect the City of Colorado Springs as an Additional Insured, as applicable.)

Indicate your ability to comply with the following requirements:

The City shall be added as an Additional Insured to all liability policies:

Yes \_\_\_\_\_ No \_\_\_\_\_

Your property and liability insurance company is licensed to do business in Colorado:

Yes \_\_\_\_\_ No \_\_\_\_\_

Provide the name of your property and liability insurance company here:

Name: \_\_\_\_\_

Your property and liability insurance company has an AM best rating of not less than B+ and/or VII:

Yes \_\_\_\_\_ No \_\_\_\_\_

Worker's Compensation Insurance is carried for all employees and covers work done in Colorado.

Yes \_\_\_\_\_ No \_\_\_\_\_

3. \_\_\_\_\_ Provide one (1) copy of current financial statements (if required). Enclose financial information in a separate envelope; do not bind with the other proposal copies. If review of the information is to be restricted to the City's financial officer, it must be marked accordingly.

4. \_\_\_\_\_ Provide the completed and signed proposal. (Proposals must be identified as specified in this RFP document). All required Exhibits are attached.

By signing below, the Offeror certifies that no person or firm other than the Offeror or as otherwise indicated has any interest whatsoever in this offer or any Contract that may be entered into as a result of this offer and that in all respects the offer is legal and firm, submitted in good faith without collusion or fraud.

Offeror has appointed \_\_\_\_\_ as the Offeror's representative and contact for all questions or clarifications in regard to this Offeror.

Telephone: (\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_

The undersigned acknowledges and understands the terms, conditions, Specifications and all Requirements contained and/or referenced and are legally authorized by the Offeror to make the above statements or representations.

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(City, State and Zip)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Name typed/Printed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(E-Mail Address)

**FEDERAL TAX ID #** \_\_\_\_\_

**This Company Is:** Corporation\_\_\_\_ Individual\_\_\_\_ Partnership\_\_\_\_  
LLC\_\_\_\_\_

**Offeror hereby acknowledges receipt of the following amendments, if applicable**  
Offeror agrees that it is bound by all Amendments identified herein.

AMENDMENT #1 \_\_\_\_\_ DATED: \_\_\_\_\_

AMENDMENT #2 \_\_\_\_\_ DATED: \_\_\_\_\_

AMENDMENT #3 \_\_\_\_\_ DATED: \_\_\_\_\_

**Please Note the attached Representations and Certifications must be initialed by Offeror in the spaces provided and returned with this certification.**

## REPRESENTATIONS AND CERTIFICATIONS

Exhibit 1 Continued

### 1. INSURANCE REQUIREMENTS

Offeror shall comply with all insurance requirements and will submit the Insurance Certificates prior to performance start date. If limits are different from the stated amounts, Offeror shall explain variance. Certain endorsements and "additionally insured" statements may require further clarification and specific statements on a project specific basis and should have been described in the Offeror's proposal.

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Initials for 1

### 2. ETHICS VIOLATIONS

- a) The Offeror shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this clause in its own operations and direct business relationships.
- b) Offeror certifies the Offeror has not violated or caused any person to violate, and shall not violate or cause any person to violate, the City's Code of Ethics contained in Article 3, of Chapter 1 of the City Code and in the City's Procurement Rules and Regulations
- c) When the Offeror has reasonable grounds to believe that a violation described in this clause may have occurred, the Offeror shall promptly report the possible violation to the City Contracts Specialist in writing.
- c) The Offeror must disclose with the signing of this proposal, the name of any officer, director, or agent who is also an employee of the City and any City employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the Offeror's firm or any of its branches.
- d) In addition, the Offeror must report any conflict or apparent conflict, current or discovered during the performance of the Contract, to the City Contracts Specialist.
- e) The Offeror shall not engage in providing gifts, meals or other amenities to City employees. The right of the Offeror to proceed may be terminated by written notice issued by City Contracts Specialist if Offeror offered or gave a gratuity to an officer, official, or employee of the City and intended by the gratuity to obtain a contract or favorable treatment under a contract.
- f) The Offeror shall cooperate fully with the City or any agency investigating a possible violation on behalf of the City. If any violation is determined, the Offeror will properly compensate the City.
- g) The Offeror agrees to incorporate the substance of this clause (after substituting "Contractor" for "Offeror") in all subcontracts under this offer.

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Initials for 2



### **3. ILLEGAL ALIENS**

If Offeror has any employees or subcontractors, Offeror shall comply with § 8-17.5-101, et seq., C.R.S. regarding Illegal Aliens – Public Contracts for Services, and this section of this Agreement. 8-17.5-102 includes, in part, that:

1. Offeror shall not:
  - a. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
  - b. Enter into a contract with a subcontractor that fails to certify to Offeror that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
2. Offeror has verified or attempted to verify that Offeror does not employ any illegal aliens and, will participate in the E-Verify Program or State Department program in order to confirm eligibility of all employees who are newly hired to perform work under public contract for services.
3. Offeror will not use E-Verify Program or State Department program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
4. If Offeror obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Provider shall:
  - a. Notify the subcontractor and the City within three days that Offeror has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
  - b. Terminate the subcontract with the subcontractor if within three days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien. However, the Offeror shall not terminate the contract with the subcontractor if during this three day period:
    - i. The subcontractor provides information which establishes that the subcontractor has not knowingly employed or contracted with an illegal alien, and
    - ii. The Offeror will not employ the illegal aliens in the performance of any City contract.
5. Offeror shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in §8-17.5-102(5), C.R.S.
6. If Offeror violates this provision, the City may terminate the contract for a breach of contract. If the Agreement is terminated, the Offeror shall be liable for actual and consequential damages.

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Initials for 3

### **4. COOPERATION WITH OTHER CONTRACTORS**

Other City activities/contracts may be in progress or start during the performance of this

contract. The Offeror shall coordinate the work harmoniously with the other contractors or City personnel, if applicable.

\_\_\_\_\_  
Initials for 4

## **5. INTERNET USE**

Should the Offeror require access to City Internet resources in the performance of this requirement, a "Contractor's Internet Use Agreement" form must be separately signed by each individual having access to the City Network. The completed Contractor's Internet Use Agreement will be maintained with this agreement. Inappropriate use of the City Network will be grounds for immediate termination of any awarded contact.

\_\_\_\_\_  
Initials for 5

## **6. LITIGATION**

If awarded a contract, Offeror shall notify the City within five (5) calendar days after being served with a summons, complaint, or other pleading in any matter which has been filed in any federal or state court or administrative agency. The Offeror shall deliver copies of such document(s) to the City's Procurement Services Manager. The term "litigation" includes an assignment for the benefit of creditors, and filings of bankruptcy, reorganization and/or foreclosure.

\_\_\_\_\_  
Initials for 6

## **7. CONTRACTOR'S REGISTRATION INFORMATION**

Offeror's firm verifies and states that they are (check all that apply):

- Large Business (i.e. do not qualify as a small business or non-profit)
- Nonprofit
- Small Business
- Minority Owned Business/Small Disadvantaged Business
- Woman Owned Business

- \_\_\_\_\_ Veteran Owned Business
- \_\_\_\_\_ Service-Disabled Veteran Owned Business
- \_\_\_\_\_ HUBZone Business

Note: The City accepts self-certification for these categories in accordance with Small Business Administration (SBA) standards. The SBA size standards are found on the SBA website <https://www.sba.gov/content/am-i-small-business-concern>.

\_\_\_\_\_  
Initials for 7

**8. CONTRACTOR PERSONNEL**

- a) The Offeror shall appoint one of its key personnel as the “Authorized Representative” who shall have the power and authority to interface with the City and represent the Offeror in all administrative matters concerning this proposal and any awarded contract, including without limitation such administrative matters as correction of problems modifications, and reduction of costs.
- b) The Authorized Representative shall be the person identified in the Offeror’s proposal, unless the Offeror provides written notice to the City naming another person to serve as its Authorized Representative. Communications received by the City Contracts Specialist from the Authorized Representative shall be deemed to have been received from the Offeror.

The individual, \_\_\_\_\_ (Name)  
 with position, \_\_\_\_\_ (Title)  
 Can be reached at \_\_\_\_\_  
 Work telephone number: \_\_\_\_\_  
 Home telephone number: \_\_\_\_\_  
 Cellular telephone number: \_\_\_\_\_  
 E-mail address: \_\_\_\_\_

\_\_\_\_\_  
Initials for 8

**9. OFFEROR’S CERTIFICATION**

- The undersigned hereby affirms that:
- a) He/She is a duly authorized agent of the Offeror;
  - b) He/She has read and agrees to the City’s standard terms and conditions attached.
  - c) The offer is presented in full compliance with the collusive prohibitions of the City of Colorado Springs. The Offeror certifies that no employee of its firm has discussed, or

compared the offer with any other offeror or City employee and has not colluded with any other offeror or City employee.

d) The Offeror certifies that it has checked all of its figures, and understands that the City will not be responsible for any errors or omissions on the part of the Offeror in preparing its proposal.

e) By submitting an offer the Offeror certifies that it has complied and will comply with all requirements of local, state, and federal laws, and that no legal requirements have been or will be violated in making or accepting this solicitation.

I hereby certify that I am submitting the proposal based on my company's capabilities to provide quality products and/or services on time.

\_\_\_\_\_  
Initials for 9

**10. OFFEROR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS:**

1. The Offeror certifies to the best of its knowledge and belief, that (i) the Offeror and/or any of its Principals
  - a. Are ( ), Are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
  - b. Have ( ), Have not ( ), within a three year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local) contract or subcontract; violation of Federal or state antitrust statutes relation to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion, or receiving stolen property; and
  - c. Are ( ), Are not ( ) presently indicated for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in any paragraphs above.
2. The Offeror shall provide immediate written notice to the City Contracts Specialist if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reasons of changed circumstances.
3. The certification in paragraph 1. above, is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City Contracts Specialist may terminate the contract resulting from this solicitation for default. Termination for default may result in additional charges being levied for the costs incurred by the City to initiate activities to replace the awarded Contractor.

\_\_\_\_\_  
Initials for 10

**11. ACCEPTANCE OF CITY CONTRACTS SPECIALIST'S SOLE AUTHORITY FOR CHANGES**

Unless otherwise specified in the Contract, the Offeror hereby agrees that any changes to the scope of work, subsequent to the original contract signing, shall be generated in writing and an approval signature shall be obtained from the City Contracts Specialist prior to additional work performance.

\_\_\_\_\_  
Initials for 11

**12. CITY CONTRACTOR SAFETY PROGRAM**

The Offeror hereby agrees to adhere to a worker safety program for contractor employees on a City job site or location. By initialing below, the Offeror has reviewed the information and will abide by the City Policy which is available for review:

<https://coloradosprings.gov/finance/page/procurement-regulations-and-documents>

\_\_\_\_\_  
Initials for 12

**13. ACCEPTANCE OF CITY ENVIRONMENTALLY PREFERRED PURCHASING (EPP) POLICY**

The City of Colorado Springs is committed to buying more environmentally preferable goods and services, as long as they meet performance needs, are available within a reasonable time and at a reasonable cost. The Offeror hereby acknowledges review of this policy by initialing below.

<https://coloradosprings.gov/finance/page/procurement-regulations-and-documents>

\_\_\_\_\_  
Initials for 13

**14. FRAUD, WASTE, AND ABUSE**

Everyone has a duty to report any suspected unlawful act impacting the City of Colorado Springs operations and its enterprises. Anyone who becomes aware of the existence or apparent existence of fraud, waste, and abuse in City of Colorado Springs

is encouraged to report such matters to the City Auditor's Office in writing or on the telephone hotline 385-2387 (ADTR). Written correspondence can be mailed to:

City Auditor  
P.O. Box 2241  
Colorado Springs CO 80901

Or via email [CityAuditManagement@springsgov.com](mailto:CityAuditManagement@springsgov.com). Any of these mechanisms allow for anonymous reporting. For more information, please go to the website <https://coloradosprings.gov/cityfraud>.

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Initials for 14

Name of Company:

Federal Tax ID Number:

DUNS Number:

Principle Place of Business:

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Signature of Authorized Representative

Printed Name:

Title:

Date:

## EXHIBIT 2 SAMPLE CONTRACT

### SERVICES CONTRACT

Contract Number:		Project Name/Title	
Vendor/Contractor			
Contact Name:		Telephone:	
Email Address:			
Address:			
Federal Tax ID #		Please check one:	<input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership
City Contracting Specialist	Name & Phone#	City Dept Rep	Name & Phone# & Department Name
NOT TO EXCEED Contract Amount:		City Account #	Acct Code (5) Fund (3) Dept (4) Project (7)
Contract Type:		Period of Performance:	

### 1. INTRODUCTION

THIS TYPE CONTRACT ("Contract") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20xx by and between the City of Colorado Springs, a Colorado municipal corporation and home rule city, in the County of El Paso, State of Colorado, (the "City"), and \_\_\_\_\_ (the "Contractor").

THE CITY AND THE CONTRACTOR HEREBY AGREE AS FOLLOWS:

The City has heretofore prepared the necessary Contract Documents for the following Activity: XXXXXXXX.

The Contractor did on the \_\_\_ day of \_\_\_\_\_, 20xx submit to the City the Contractor's written offer and proposal to do the work therein described under the terms and conditions therein set forth and furnish all materials, supplies, labor, services, transportation, tools, equipment, and parts for said work in strict conformity with the accompanying Contract Documents, which are attached hereto and incorporated herein by this reference, including the following:

1. This Contract Document
2. Appendix A – Additional Terms and Conditions
3. Appendix B – Contractor's Proposal,
4. Appendix C – Statement of Work.
5. Appendix D – Project Schedule
6. Appendix E – Insurance Requirements

## 2. COMPENSATION/CONSIDERATION

If FFP:

THIS FIRM FIXED PRICE CONTRACT is established at firm fixed amount of \$xxxxxxx.

Subject to the terms and conditions of the Contract Documents, Contractor shall provide all materials, supplies, labor, services, transportation, tools, equipment, and parts to perform \_\_\_\_\_ services for the City of Colorado Springs in a good and workmanlike manner to the satisfaction of the City for the total contract amount designated above and in the Notice of Award, to be paid by the City to the Contractor.

If T&M

Subject to the terms and conditions of the Contract Documents, Contractor shall provide all materials, supplies, labor, services, transportation, tools, equipment, and parts to perform \_\_\_\_\_ services for the City of Colorado Springs in a good and workmanlike manner to the satisfaction of the City for the estimated price of \_\_\_\_\_, not to exceed \$ \_\_\_\_\_ ("Not to Exceed estimate"). If the performance of this Contract involves the services of others or the furnishing of equipment, supplies, or materials, the Contractor agrees to pay for the same in full. At the time of payment by the City, the Contractor shall certify in writing that said payments have been so made.

This is a Time and Material (T&M) type contract. The Not to Exceed estimate is in accordance with the Contractor's T&M proposal and rates, as included in the attached proposal, dated XXXXXX. All labor charges shall be in accordance with the T&M rates provided therein. Invoiced hours shall be subject to City review and approval before payable.

The parties estimate that performance of this Contract will not exceed the Not to Exceed estimate. The Contractor shall notify the City Contracts Specialist in writing whenever it has reason to believe that the costs the Contractor expects to incur under this Contract in the following 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified herein; or the total cost for the performance of this Contract will be either greater or substantially less than had been previously estimated. As part of the notification, the Contractor shall provide the Contracts Specialist a revised estimate of the total cost of performing this Contract.

The City is not liable for any costs above the Not to Exceed estimate, and the Contractor is not obligated to continue performance under this Contract (including actions under the Termination clause of this Contract) or otherwise incur costs in excess of the Not to Exceed estimate specified herein, until the City Contracts Specialist



(i) notifies the Contractor in writing that the estimated cost has been increased and

(ii) provides a revised estimated total not to exceed price of performing this Contract.

### 3. TERM OF CONTRACT

It is further agreed that the Contractor will start work promptly and continue to work diligently until completed. The Contract Period of Performance shall be as follows:

<u>Performance Period</u>	<u>Dates</u>	<u>Price</u>
---------------------------	--------------	--------------

Base Year:

Option Year One:

Option Year Two:

Option Year Three:

Option Year Four:

Option years may be exercised unilaterally by the City at the City's sole discretion. Pricing for option years shall be as indicated above. The City may elect not to exercise an option at any time before start of an option at no additional cost to the City. Further, the City shall have the unilateral option of extending services beyond the term of the Contract, including all options, for a period not to exceed a total of six (6) months if additional time is necessary to solicit and award a new Contract. Options to extend services shall be exercised upon written notification (mailed or otherwise furnished) to the Contractor at least fifteen (15) days prior to the expiration date of the Contract, or to extend Contract for up to four additional one year option periods at the City's sole discretion.

The total value of this Contract for all years shall not exceed \$XXXXXXX. The value and current funding is \$XXXXXXX for the base year.

OR

Contractor will start work promptly after the Notice to Proceed and continue to work diligently until completed. The Contractor shall complete all work on an as ordered basis throughout the Contract period which is Calendar Days after the Notice-to-Proceed ("Period of Performance") as per the specifications and drawings. The Contractor shall provide a two-year guarantee on all work performed under this Contract after the job has been completed and accepted.

#### 4. INSURANCE

The Contractor shall provide and maintain acceptable Insurance Policy(s) consistent with the Minimum Insurance Requirements attached as Appendix E, which includes Property, Liability and Professional Errors and Omissions coverage, and as otherwise listed in Appendix E. The City of Colorado Springs shall be reflected as an additional insured on the Property and Liability policy(s).

Further, Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future City comprehensive, self, or personal injury policies. Contractor shall provide insurance coverage for and on behalf of Contractor that will sufficiently protect Contractor, or Contractor's agents, employees, servants or other personnel, in connection with the services which are to be provided by Contractor pursuant to this Contract, including protection from claims for bodily injury, death, property damage, and lost income. Contractor shall provide worker's compensation insurance coverage for Contractor and all Contractor personnel. Contractor shall file applicable insurance certificates with the City and shall also provide additional insurance as indicated in this Contract. ***A CURRENT CERTIFICATE OF INSURANCE IS REQUIRED PRIOR TO COMMENCEMENT OF SERVICES LISTING THE CITY AS ADDITIONALLY INSURED.***

#### 5. RESPONSIBILITY OF THE CONTRACTOR

- A. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all Scope of Work services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in services provided under this Contract to the satisfaction of the City.
- B. The City's review, approval of, acceptance of, or payment for the services required under this Contract shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the City for any and all damages to the City caused by the Contractor's negligent performance of any of the services furnished under this Contract.
- C. The rights and remedies of the City provided for under this Contract are in addition to any other rights and remedies provided by law.
- D. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

#### 6. WORK OVERSIGHT

- A. The extent and character of the work to be done by the Contractor shall be subject to the general approval of the City's delegated Project Manager.

- B. If any of the work or services being performed does not conform with Contract requirements, the City may require the Contractor to perform the work or services again in conformity with Contract requirements, at no increase in Contract amount. When defects in work or services cannot be corrected by re-performance, the City may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce the Contract price to reflect the reduced value of the work or services performed.
- C. If the Contractor fails to promptly perform the defective work or services again or to take the necessary action to ensure future performance is in conformity with Contract requirements, the City may (1) by Contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such work or service or (2) terminate the Contract for breach of contract.

## **7. SUBCONTRACTORS, ASSOCIATES, AND OTHER CONTRACTORS**

- A. Any subcontractor, outside associates, or other contractors used by the Contractor in connection with Contractor's work under this Contract shall be limited to individuals or firms that are specifically identified by the Contractor in the Contractor's proposal and agreed to by the City. The Contractor shall obtain the City's Project Manager's written consent before making any substitution of these subcontractors, associates, or other contractors.
- B. The Contractor shall include a flow down clause in all of its subcontracts, agreements with outside associates, and agreements with other contractors. The flow down clause shall cause all of the terms and conditions of this Contract, including all of the applicable parts of the Contract Documents, to be incorporated into all subcontracts, agreements with outside associates, and agreements with other contractors. The flow down clause shall provide clearly that there is no privity of contract between the City and the Contractor's subcontractors, outside associates, and other contractors.

## **8. KEY PERSONNEL**

The key personnel listed in the proposal and/or below will be the individuals used in the performance of the work. If any of the listed key personnel leave employment or are otherwise not utilized in the performance of the work, approval to substitute must be obtained by the Contractor from the City's Project Manager. Any substitute shall have the same or a higher standard of qualifications that the key personnel possessed at the time of Contract award.

## **9. START AND CONTINUANCE OF WORK**

It is further agreed that the Contractor will start work promptly and continue to work diligently until this Contract is completed.

## **10. APPROPRIATION OF FUNDS**

This Contract is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract, 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 Contract 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 sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Contract.

## **11. CHANGES**

The Contractor and the City agree and acknowledge as a part of this Contract that no change order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for this Contract as listed above, unless the Contractor has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision of this Contract. The Contractor and the City further agree and acknowledge as a part of this Contract that no change order or other form or order or directive which requires additional compensable work to be performed under this Contract shall be issued by the City unless funds are available to pay such additional costs, and, regardless of any remedy-granting provision included within this Contract, the Contractor shall not be entitled to any additional compensation for any change which increases or decreases the Contract completion date, or for any additional compensable work performed under this Contract, and expressly waives any rights to additional compensation, whether by law or equity, unless, prior to commencing the additional work, the Contractor is given a written change order describing the change in Contract completion date or the additional compensable work to be performed, and setting forth the amount of compensation to be paid, and

such change order is signed by the authorized City representative, as defined below. The amount of compensation to be paid, if any, shall be deemed to cover any and all additional, direct, indirect or other cost or expense or profit of the Contractor whatsoever. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this Contract.

No change, amendment, or modification to this Contract shall be valid unless duly approved and issued in writing by the City of Colorado Springs Procurement Services Division. The City shall not be liable for any costs incurred by the Contractor resulting from work performed for changes not issued in writing by the City of Colorado Springs Procurement Services Division.

The following personnel are authorized to sign changes, amendments, or modifications to this Contract.

The Project Manager: Changes up to \$14,999.99

The City of Colorado Springs Chief of Staff: Changes up to \$499,999.99

The Mayor of the City of Colorado Springs: Unlimited

## **12. ASSIGNMENT**

No assignment or transfer by the Contractor of this Contract or any part thereof or of the funds to be received thereunder by the Contractor will be recognized unless such assignment has had the prior written approval of the City and the surety has been given due notice of such assignment. Such written approval by the City shall not relieve the Contractor of the obligations under the terms of this Contract. In addition to the usual recitals in assignment contracts, the following language must be included in the assignment:

It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

## **13. CHOICE OF LAW**

This Contract is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado home rule city. Court venue and jurisdiction shall be exclusively in the Colorado District Court for El Paso County, Colorado. The Parties agree that the place of performance for this Contract is deemed to be in the City of Colorado Springs, El Paso County, State of Colorado. The Contractor shall ensure that the Contractor and the Contractor's employees, agents, officers and subcontractors are familiar with, and comply with, applicable Federal, State, and Local laws and regulations as now written or hereafter amended.

#### **14. WORKERS' COMPENSATION INSURANCE**

Contractor shall take out and maintain during the Period of Performance, Colorado Worker's Compensation Insurance for the Contractor and all employees of the Contractor. If any service is sublet by the Contractor, the Contractor shall require the subcontractor to provide the same coverage for the subcontractor and subcontractor's employees. Workers' Compensation Insurance shall include occupational disease provisions covering any obligations of the Contractor in accord with the provisions of the Workers' Compensation Act of Colorado.

#### **15. INDEMNIFICATION**

Contractor agrees that the Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Contractor's obligations or actions under this Contract caused by any willful or negligent error, omission or act or a failure to observe any applicable standard of care by the Contractor or any person employed by it or anyone for whose acts the Contractor is legally liable. In consideration of the award of this Contract, to the extent damages are 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 officials, trustees, employees, agents, and volunteers for losses arising from the work performed by the Contractor for the City. The indemnification obligation shall survive the expiration or termination of this Contract

#### **16. INDEPENDENT CONTRACTOR**

In the performance of the Contractor's obligations under this Contract, it is understood, acknowledged and agreed between the parties that the Contractor is at all times acting and performing as an independent contractor, and the City shall neither have nor exercise any control or direction over the manner and means by which the Contractor performs the Contractor's obligations under this Contract, except as otherwise stated within the Contract terms. The City shall not provide any direction to the Contractor on the work necessary to complete the project. Contractor understands that it is an independent contractor responsible for knowing how to perform all work or tasks necessary to complete project. The Contractor understands and agrees that the Contractor and the Contractor's employees, agents, servants, or other personnel are not City employees. The Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to the Contractor or any of the Contractor's employees, agents, servants or other personnel performing services or work under this Contract, whether it is of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither the Contractor nor the Contractor's employees, agents, servants or other personnel shall be entitled to

any City payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

## **17. APPLICABLE LAW AND LICENSES**

In the conduct of the services or work contemplated in this Contract, the Contractor shall ensure that the Contractor and all subcontractors comply with all applicable state, federal and City and local law, rules and regulations, technical standards or specifications. The Contractor shall qualify for and obtain any required licenses prior to commencement of work.

## **18. PRIOR AGREEMENTS**

This is a completely integrated Contract and contains the entire agreement between the parties. Any prior written or oral agreements or representations regarding this Contract shall be of no effect and shall not be binding on the City. This Contract may only be amended in writing, and executed by duly authorized representatives of the parties hereto.

## **19. INTELLECTUAL PROPERTY**

The Parties hereby agree, and acknowledge, that all products, items writings, designs, models, examples, or other work product of the Contractor produced pursuant to this Contract are works made for hire, and that the City owns, has, and possesses any and all ownership rights and interests to any work products of the Contractor made under this Contract, including any and all copyright, trademark, or patent rights, and that compensation to the Contractor for Agreement and acknowledgment of this intellectual property right section of this Contract is included in any compensation or price whatsoever paid to the Contractor under this Contract. It is the intent of the parties that the City shall have full ownership and control of the Contractor's work products produced pursuant to this Contract, and the Contractor specifically waives and assigns to the City all rights which Contractor may have under the 1990 Visual Artists Rights Act, federal, and state law, as now written or later amended or provided. In the event any products, items writings, designs, models, examples, or other work product produced pursuant to this Contract is deemed by a court of competent jurisdiction not to be a work for hire under federal copyright laws, this intellectual property rights provision shall act as an irrevocable assignment to the City by the Contractor of any and all copyrights, trademark rights, or patent rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, including all rights in perpetuity. Under this irrevocable assignment, the Contractor hereby assigns to the City the sole and exclusive right, title, and interest in and to the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, without further consideration, and agrees to assist the City in registering and from time to time enforcing all copyrights and other rights and protections relating to the Contractor's products, items writings,

designs, models, examples, or other work product in any and all countries. It is the Contractor's specific intent to assign all right, title, and interest whatsoever in any and all copyright rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, in any media and for any purpose, including all rights of renewal and extension, to the City. To that end, the Contractor agrees to execute and deliver all necessary documents requested by the City in connection therewith and appoints the City as Contractor's agent and attorney-in-fact to act for and in Contractor's behalf and stead to execute, register, and file any such applications, and to do all other lawfully permitted acts to further the registration, prosecution, issuance, renewals, and extensions of copyrights or other protections with the same legal force and effect as if executed by the Contractor; further, the parties expressly agree that the provisions of this intellectual property rights section shall be binding upon the parties and their heirs, legal representatives, successors, and assigns.

## **20. WAIVERS**

No waiver of default by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Contractor shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained to be performed, kept, and observed by the Contractor.

## **21. THIRD PARTIES**

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person or entity on such Contract. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Contract, receiving services or benefits under this Contract shall be deemed to be incidental beneficiaries only.

## **22. TERMINATION**

### **A. Termination for Convenience.**

By signing this Contract, Contractor represents that it is a sophisticated business and enters into the Contract voluntarily, has calculated all business risks associated with this Contract, and understands and assumes all risks of being terminated for convenience, whether such risks are known or not known. Contractor agrees that the City may terminate this Contract at any time for convenience of the City, upon written notice to the Contractor. 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 work or portion of the work. Contractor further expressly agrees and assumes the risks that the City shall not be liable for any unperformed work, anticipated profits, overhead,



mobilizations costs, set-up, demobilization costs, relocation costs of employees, layoffs or severance costs, administrative costs, productivity costs, losses on disposal of equipment or materials, cost associated with the termination of subcontractors, costs associated with purchase orders or purchases, or any other costs or fees of any kind and nature, if Contractor has started or performed portions of the Contract prior to receiving notice from the City. The City shall be liable only for the portions of work Contractor actually satisfactorily completed up to the point of the issuance of the Notice of Termination for convenience. Upon receipt of this notice the Contractor shall immediately: discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.

B. Termination for Cause: The occurrence of any one or more of the following events (“Event of Default”) will justify termination for cause:

- i. Contractor’s failure to perform the work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule as adjusted from time to time.
- ii. Contractor’s disregard of the laws or regulations of any public body having jurisdiction.
- iii. Contractor’s disregard of the authority of Project Manager.
- iv. Contractor’s violation in any material provision of the Contract Documents.
- v. Contractor’s failure to make prompt payments to its subcontractors, and suppliers of any tier, or laborers or any person working on the work by, through, or under the Contractor or any of them, any all of their employees, officers, servants, members, and agents.
- vi. Contractor files a petition commencing a voluntary case under the U.S. Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other U.S. or state bankruptcy Laws, or shall be adjudicated a debtor or be declared bankrupt or insolvent under the U.S. Bankruptcy Code, or any other federal or state laws relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the U.S. Bankruptcy Code or an answer proposing the adjudication of Contractor as a debtor or bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code or any other U.S. federal or state bankruptcy laws is filed in any court and Contractor consents to or acquiesces in the filing of that pleading or the petition

or answer is not discharged or denied within sixty (60) Calendar Days after it is filed.

vii. A custodian, receiver, trustee or liquidator of Contractor, all or substantially all of the assets or business of Contractor, or of Contractor's interest in the Work or the Contract, is appointed in any proceeding brought against Contractor and not discharged within sixty (60) Calendar Days after that appointment, or if Contractor shall consent to or acquiesces in that appointment.

viii. Contractor fails to commence correction of defective work or fails to correct defective work within a reasonable period of time after written notice.

If one or more of the events identified in Paragraphs i-viii above occur, City may give Contractor written notice of the event and direct the event be cured. Any such Notice to Cure will provide Contractor a minimum of ten (10) calendar days to prepare and submit to the Project Manager a plan to correct the Event of Default. If such plan to correct the Event of Default is not submitted to the Project Manager within ten (10) days after the date of the written notice or such plan is unacceptable to the City, the City may, give Contractor (and the Surety, if any) written notice that Contractor's services are being terminated for cause. Upon delivery of the termination notice, City may terminate the services of Contractor in whole or in part, exclude Contractor from the site, and take possession of the work and of all Contractor's tools, appliances, equipment, and machinery at the project site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the work all materials and equipment stored at the site or for which City has paid Contractor but which are stored elsewhere, and finish the work as City may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until Certificate of Completion of the work. In the event City terminates this Contract for Cause and the cost of completing the work exceeds the unpaid balance of the Contract price, Contractor shall pay City for any costs of completion which exceed the Contract price when combined with all amounts previously paid to Contractor. When exercising any rights or remedies under this paragraph City shall not be required to obtain the lowest price for the work performed. Should the cost of such completion, including all proper charges, be less than the original Contract price, the amount so saved shall accrue to the City. Neither the City nor any officer, agent or employee of the City shall be in any way liable or accountable to the Contractor or the Surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid.

Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor or Surety then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.

C. Termination Notice. Upon receipt of a termination notice, whether for convenience or cause, the Contractor shall immediately: discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.

D. Removal of Equipment. Except as provided above, in the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of Contractor's equipment and supplies from the property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

### **23. BOOKS OF ACCOUNT AND AUDITING**

The Contractor shall make available to the City if requested, true and complete records, which support billing statements, reports, performance indices, and all other related documentation. The City's authorized representatives shall have access during reasonable hours to all records, which are deemed appropriate to auditing billing statements, reports, performance indices, and all other related documentation. The Contractor agrees that it will keep and preserve for at least seven years all documents related to the Contract which are routinely prepared, collected or compiled by the Contractor during the performance of this Contract.

The City's Auditor and the Auditor's authorized representatives shall have the right at any time to audit all of the related documentation. The Contractor shall make all documentation available for examination at the Auditor's request at either the Auditor's or Contractor's offices, and without expense to the City.

### **24. ILLEGAL ALIENS**

Illegal Aliens - Public Contracts for Services - Compliance with Title 8, Article 17.5, Colorado Revised Statutes: The Contractor acknowledges, understands, agrees, and certifies that: In the performance of any work or the provision of any services by the Contractor under this Contract, the Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract; or enter into a contract with any subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or under the subcontract to this Contract. The Contractor certifies in accord with Section 8-17.5-102(1) C.R.S. that, on the date the Contractor signs this Contract, the Contractor does not knowingly employ or Contract with an illegal alien who will perform work under this Contract and that the Contractor shall participate in the e-verify program or Colorado Department of Labor and Employment program in order to confirm the employment eligibility of all employees who are newly hired for employment or to perform work under this Contract. The Contractor is expressly prohibited from using the e-verify program or Colorado Department of Labor and Employment program procedures to undertake pre-

employment screening of job applicants while this Contract and any services under this Contract are being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract for services knowingly employs or contracts with an illegal alien, the Contractor shall notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, and terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the Contract with the subcontractor if during the three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor shall comply with any request by the City, federal government, or the Colorado Department of Labor and Employment made in the course of an investigation. If the Contractor violates or fails to comply with any provision of C.R.S. 8-17.5-101 et seq, the City may terminate this Contract for breach of contract. If this Contract is so terminated, the Contractor shall be liable for any actual and consequential damages to the City.

## **25. COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986**

Contractor certifies that Contractor has complied with the United States Immigration Reform and Control Act of 1986. All persons employed by Contractor for performance of this Contract have completed and signed Form I-9 verifying their identities and authorization for employment.

## **26. LABOR**

The Contractor shall employ only competent and skilled workmen and foremen in the conduct of work on this Contract. The Contractor shall at all times enforce strict discipline and good order among Contractor's employees. The Project Manager shall have the authority to order the removal from the work of any person, including Contractor's or any subcontractor's employees, who refuses or neglects to observe any of the provisions of these Plans or Specifications, or who is incompetent, abusive, threatening, or disorderly in conduct and any such person shall not again be employed on the Project.

In no event shall the City be responsible for overtime pay.

## **27. GRATUITIES**

A. This Contract may be terminated if the Mayor, the Mayor's designee, and/or the Procurement Services Manager determine, in their sole discretion, that the Contractor or any officer, employee, agent, or other representative whatsoever, of the Contractor offered or gave a gift or hospitality to a City officer, employee, agent or Contractor for the purpose of influencing any decision to grant a City contract or to obtain favorable treatment under any City contract.

- B. The terms "hospitality" and "gift" include, but are not limited to, any payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or anything of value given or offered, including but not limited to food, lodging, transportation, recreation or entertainment, token or award.
- C. Contract termination under this provision shall constitute a breach of contract by the Contractor, and the Contractor shall be liable to the City for all costs of reletting the contract or completion of the project. Further, if the Contractor is terminated under this provision, or violates this provision but is not terminated, the Contractor shall be subject to debarment under the City's Procurement Regulations. The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## **28. NON-DISCRIMINATION**

- A. In accord with section 24-34-402, C.R.S., the Contractor will not discriminate against any employee or applicant for employment because of disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry. But, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to take into consideration disability if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job. The Contractor will take affirmative steps to ensure that applicants are employed, and that employees are treated during employment without regard to their disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship.
- B. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry.
- D. Contractor will cooperate with the City in using Contractor's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts or work under this Contract.

## **29. ORDER OF PRECEDENCE**

Any inconsistency in this Contract shall be resolved by giving precedence in the following order:

- A. This Contract document with its terms and conditions
- B. The Statement of Work
- C. Other Appendices, Attachments, Exhibits, or Schedules

## **30. HEADINGS**

The section headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.

## **31. DISPUTES**

- A. All administrative and contractual disputes arising from or related to this Contract shall be addressed in the following manner:
  - i. If either Party disputes or disagrees with a Contract term or the other Party's interpretation of a Contract term or has any other administrative or contractual dispute not addressed in the Unanticipated Circumstances provisions, such Party shall promptly give the other Party written notice of said dispute.
  - ii. The Parties shall hold a meeting as soon as reasonably possible, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled unless otherwise agreed to by the Parties in writing.
  - iii. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
  - iv. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall conduct mediation for the Parties as the sole mediator.
  - v. The Parties agree to participate in good faith in the mediation and negotiations for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to pursue any other remedy afforded by the laws of the State of Colorado.

- vi. Until final resolution of any dispute hereunder, the Contractor shall diligently proceed with the performance of this Contract as directed by the City. For purposes of this Contract, termination for convenience shall not be deemed a dispute. The City of Colorado Springs and the Contractor agree to notify each other in a timely manner of any claim, dispute, or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute, or cause of action. To the extent that such negotiations fail, the City of Colorado Springs and the Contractor agree that any lawsuit or cause of action that arises from or is related to this Contract shall be filed with and litigated only by the Colorado District Court for El Paso County, CO.

### **32. DELIVERY**

The City may cancel this Contract or any portion thereof if delivery is not made when and as specified, time being of the essence in this Contract. Contractor shall pay the City for any loss or damage sustained by the City because of failure to perform in accordance with this Contract.

### **33. PAYMENTS**

All invoices shall be sent to the Project Manager identified in this Contract.

The City will pay the Contractor, upon submission of proper invoices, the prices stipulated in the Contract for services rendered and accepted, less any deductions provided in this Contract within 30 days (Net 30). The City will not pay late fees or interest. Any discount payment terms offered on the invoice may be taken by the City.

Each invoice must contain at least the following information:

Contract number, issued purchase order number, invoice number, invoice date, timeframe covered by invoice, type and amount of labor and materials used for that time period, dollar amount in unit price, extended price, and total value of invoice.

#### **IF T&M**

The City will make payments for services on a monthly basis for services performed during the previous month in accordance with this Contract. All labor Invoices shall include labor categories, rates, hours worked, and total amounts per category. All labor categories and rates charged must be included in this Contract. No other categories or rates will be allowed or payable. All labor invoices are subject to City approval.

Materials will be payable on a reimbursable basis with no additional profit, fee, overhead, handling, or General and Administrative (G&A) costs. All costs for

materials shall be approved by the City Contracts Specialist before the costs are incurred and payable.

The City will pay the Contractor, upon submission of proper invoices, the prices stipulated in the Contract for services rendered and accepted, less any deductions provided in this Contract within 30 days (Net 30). The City will not pay late fees or interest. Any discount payment terms offered on the invoice may be taken by the City.

#### **34. INSPECTION OF SERVICES**

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the services furnished under this Contract conform to Contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any City inspection and testing required in the Contract's specifications, except for specialized inspections or tests specified to be performed solely by the City.

- A. Definition of "services", as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City during Contract performance and for as long afterwards as the Contract requires.
- C. The City has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The City will perform inspections and tests in a manner that will not unduly delay the work.
- D. If the City performs inspections or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

#### **35. SECURITY**

The City maintains security requirements regarding access to City buildings and other City workplaces and worksites on City property. All Contractor personnel accessing City buildings, workplaces, or worksites, may be required to produce a valid, Government issued picture identification. Contractor personnel lacking such identification may not be allowed access to such sites. No costs incurred by the Contractor due to City security requirements shall be allowable or payable under this Contract.



### **36. TIME IS OF THE ESSENCE**

In as much as the Contract concerns a needed or required service, the terms, conditions, and provisions of the Contract relating to the time of performance and completion of work are of the essence of this Contract. The Contractor shall begin work on the day specified and shall prosecute the work diligently so as to assure completion of the work within the number of calendar days or date specified, or the date to which the time for completion may have been extended.

### **37. EMPLOYMENT OF LABOR**

The Contractor shall comply with, and defend and hold the City harmless from any violation of all laws and lawful rules and regulations, both of the State of Colorado and of the United States, relating to Workmen's Compensation, unemployment compensation, Social Security, payment for overtime, and all other expenses and conditions of employment under this Contract.

### **38. SALES TAX**

The Contractor must have a tax-exemption certificate from the Colorado Department of Revenue for this project. The certificate does not apply to City of Colorado Springs Sales and Use Tax which shall be applicable. The tax exempt project number and the exemption certificate only applies to County, PPRTA (Pikes Peak Rural Transportation Authority), and State taxes when purchasing construction and building materials **to be incorporated into this project**.

Furthermore, the exemption **does not** include or apply to the purchase or rental of equipment, supplies or materials that **do not become a part of the completed project or structure**. Such purchases and rentals are subject to full applicable taxation.

All contracts with subcontractors must include the City of Colorado Springs Sales and Use Tax on the work covered by the Contract, and other taxes as applicable.

Note: For all equipment, materials and supplies incorporated into the work purchased from vendors or suppliers not licensed to collect City Sales Tax (i.e. out of state suppliers, etc.), City Use Tax is due and payable to the City. The Contractor shall execute and deliver, and shall cause the Contractor's subcontractors to execute and deliver to the City Sales Tax Office, ST 16 forms listing all said equipment, materials and supplies and the corresponding use tax due, along with payment for said taxes. Any outstanding taxes due may be withheld from the final payment due the Contractor and may result in suspension of Contractor from bidding on City projects.

Forms and instructions can be downloaded at <https://coloradosprings.gov/sales-tax/page/construction-contractors>. Questions can be directed to the City Sales Tax Division at (719) 385-5903 or [Construction\\_SalesTax@coloradosprings.gov](mailto:Construction_SalesTax@coloradosprings.gov).

Our Registration Numbers are as follows:  
City of Colorado Springs  
Federal I.D.: 84-6000573  
Federal Excise: A-138557  
State Sales Tax: 98-03479

The Contractor's payment or exemption of State of Colorado, El Paso County and City Sales and Use Taxes shall be as specified herein.

### **39. SEVERABILITY**

If any terms, conditions, or provisions of this Contract shall be held unconstitutional, illegal, or void, such finding shall not affect any other terms, conditions, or provisions of this Contract.

### **40. LIABILITY OF CITY EMPLOYEES**

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.

### **41. USE OF CITY NAME OR LOGO**

Except as otherwise provided in this Contract, the Contractor shall not refer to this Contract or the City of Colorado Springs in any advertising or promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the City of Colorado Springs, its employees, or its Departments, or is considered by these entities to be superior to other products or services. Any use of the name or logo of the City of Colorado Springs in advertising or promotions must be approved in writing by the City of Colorado Springs Contracts Specialist assigned to the Contract prior to such use.

### **42. RESERVED**

### **43. ELECTRONIC SIGNATURES**

This Agreement and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more counterparts, each of which shall be (i) an original, and all of which taken together shall constitute one and the same agreement, (ii) a valid and binding agreement and fully admissible under state and federal rules of evidence and (iii) enforceable in accordance with its terms.

#### **44. APPENDICES**

The following Appendices are made a part of this Agreement:

1. Appendix A – Additional Terms and Conditions
2. Appendix B – Contractor's Proposal,
3. Appendix C – Statement of Work.
4. Appendix D – Project Schedule
5. Appendix E – Insurance Requirements

## CONTRACT SIGNATURE PAGE

The Contractor certifies in accord with Section 8-17.5-102(1) C.R.S. that, on the date the Contractor signs this Contract, the Contractor does not knowingly employ or Contract with an illegal alien who will perform work under this Contract and that the Contractor shall participate in the e-verify program or Colorado Department of Labor and Employment program in order to confirm the employment eligibility of all employees who are newly hired for employment or to perform work under this Contract. The Contractor is expressly prohibited from using the e-verify program or Colorado Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract are being performed.

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed on the day and the year first above written.

This Contract is executed in one (1) original copy.

**THE CITY OF COLORADO SPRINGS,  
COLORADO:**

**SECOND PARTY:**

**SAMPLE CONTRACT ONLY**

Corporate Name

**DO NOT SIGN**

Signature

Date

Title

### EXHIBIT 3 EXCEPTIONS

Print the words "no exceptions"(here)\_\_\_\_\_ if there are no exceptions taken to any of the terms, conditions, or specifications of these proposal documents or contract.

If there are exceptions taken to any of the terms, conditions, or specifications of the proposal document or contract, they must be clearly stated on a separate sheet of paper attached to this sheet and returned with your proposal.

**Note:** All potential Offerors are hereby advised that exceptions taken may be considered during the evaluation phase which may affect the final scoring of proposals. Offerors stipulating that the City must use their contract or agreement may be determined non-responsive and their Proposal determined unacceptable.

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_  
(City, State and Zip Code)

Authorized Signature: \_\_\_\_\_

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

Printed Name/Title: \_\_\_\_\_

Return this form with your Proposal.

## EXHIBIT 4 MINIMUM INSURANCE REQUIREMENTS

The following listed minimum insurance requirements shall be carried by all contractors and consultants unless otherwise specified in the City's solicitation package, Special Provisions or Standard Specifications.

1. X Workers' Compensation and Employers Liability as required by statute. Employers Liability coverage is to be carried for a minimum limit of \$100,000.
2. X Automobile Liability for limits not less than \$1,000,000 combined single limit for bodily injury and property damage for each occurrence. Coverage shall include owned, non-owned and hired automobiles.
3. X Commercial General Liability for limits not less than \$1,000,000 combined single limit for bodily injury and property damage for each occurrence and not less than \$2,000,000 aggregate. Coverage shall include premises and operations liability, blanket contractual, broad form property damage, products and completed operations and personal injury endorsements.
4. \_\_\_\_\_ Builders Risk or Installation Floater Insurance will be provided by the Owner (excluding earthquake or flood). This insurance shall insure and protect from all insurable risks of physical loss or damage. Contractors and subcontractors will be covered, excluding their own machinery, tools and equipment. The deductible under The Builders Risk or Installation Floater shall be sustained and borne by the Contractor. Losses will be adjusted with and made payable to the Owner and others as their interests may appear.
5. \_\_\_\_\_ Professional Liability Insurance providing coverage for acts, errors or omissions committed or alleged to have been committed by architects and engineers arising out of the conduct of their professional practice. The coverage shall carry a project limit of \$500,000. The coverage shall have an extended reporting period of 2 years following the date of substantial completion of the project for reporting of claims.
6. \_\_\_\_\_ Pollution Legal Liability Insurance for limits not less than \$1,000,000 per occurrence (or claims made) and not less than \$1,000,000 aggregate for bodily Injury, Personal Injury and property Damage. This coverage must include any losses arising from transit exposures and also include all costs associated with clean-up, containment, and disposal of any hazardous liquids or materials.
7. X Except for workers compensation, employer's liability insurance, and Professional Liability Insurance, the City of Colorado Springs and the Pikes Peak Rural Transportation Authority (when applicable) must be named as an additional insured. Certificates of Insurance must be submitted before commencing the work and provide 30 days' notice prior to any cancellation except for 10 day notice with respect to non-payment of premium.
8. \_\_\_\_\_ Medical Malpractice Liability Insurance for limits not less than \$1,000,000 per occurrence.
9. X All coverage furnished by contractor is primary, and that any insurance held by the City of Colorado Springs Colorado Springs is excess and non-contributory.

The undersigned certifies and agrees to carry and maintain the insurance requirements indicated above throughout the contract Period of Performance

\_\_\_\_\_  
(Name of Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

## **EXHIBIT 5 SCOPE OF WORK**

### **Introduction**

The City of Colorado Springs (the “City”) seeks responses from qualified respondents interested in entering into an agreement for the use and operation of the Westside Community Center (the “Center”) located at 1628 West Bijou Street. The City is interested in exploring options that allow for the Westside Community Center to remain functioning as a community center but encourages a balance of creativity and financial feasibility in responses. This project reflects priorities of the City of Colorado Springs Strategic Plan, which encourages the City to ensure wise use of resources and expand partnerships where possible to leverage existing assets. The City may enter into negotiations with a respondent, depending on the number of respondents and proposals.

### **Background**

In the spring of 2010, the City of Colorado Springs was facing serious budget shortfalls, which created an uncertain future for four community centers. The City invited non-profit organizations to consider collaborating with them to keep the community centers open. The Center for Strategic Ministry, a 501(c)(3) that serves as a supporting organization of Woodmen Valley Chapel, submitted a proposal to partner with the city and was awarded a management contract to operate the Westside Community Center. This management agreement will be expiring within the next six months, so the City is exploring future opportunities for the site.

### **Scope**

The City is committed to ensuring that the Center emerges as a vibrant and financially viable entity that provides substantial and sustained benefits to the Westside neighborhood and the community as a whole. The City encourages proposals that are committed to continuing the Westside facility’s primary function as a community center. The City is interested in identifying competitive proposals that can balance bid price, business plan and community benefits in order to achieve stated goals and will set up appropriate mechanisms to ensure the community benefits are delivered.

Specific goals of the RFP include the following:

- To secure a financially stable entity that will effectively manage, operate and maintain the Westside Community Center;
- To have the Westside Community Center support and foster activities that will provide beneficial services to the Westside neighborhood as well as the community as a whole; and
- To reduce the level of maintenance and capital demands upon the City by supporting maintenance and capital improvement efforts for the facility.

The successful applicant shall:

- Implement a business model (addressing management, marketing, financial structure and feasibility, reporting and accountability) that encourages and maximizes the use of the facility through innovative programs and/or services;
- Maximize use of managed spaces; and
- Insure that all programs and/or services offered are appropriate for a public venue and comply with any applicable City of Colorado Springs Code or Ordinances.

### **The Property**

The Westside Community Center is located at 1628 W. Bijou Street. It is a 2.8-acre parcel encompassing an entire city block, bounded by Bijou Street, 16<sup>th</sup> Street, Platte Avenue and 17<sup>th</sup> Street. This site was originally the home of Buena Vista Elementary School. The property is currently zoned PF. The surrounding community is zoned R2. The land around the school is currently developed with a mixture of single-family and multi-family homes, primarily duplexes. The current community center operation has provided comprehensive, intensive integrated and community-based services at a single site for youth, families and the elderly. Prior to a community center, the Westside Center was the Buena Vista Elementary School. With three buildings, ranging in age from almost 100 years old to 50 years old, the site encompasses an entire city block with a significant amount of available open space along the northern side of the property. Approximate square footage of the three on-site community center buildings exceeds 32,000 square feet. The current buildings include gym space, an auditorium stage, and a small kitchen as well as multiple classrooms and office spaces. Recent renovations include ADA enhancements to restrooms and exterior spaces, in addition to improved landscaping and parking lots.

A number of exhibits provide an overview of the property and provide an example of its current uses. These exhibits are listed below:

- Appendix A – Site Plans
- Appendix B – Photos

### **Additional Terms and Conditions**

To meet the objective of this RFP, the following terms and conditions have been established:

- The start date for the successful respondent is negotiable, but must occur no later than April 1, 2022.
- Fees and charges may be assessed to help offset operational costs.
- Multiple organizations may come together under one operational plan.



- The successful applicant will be responsible for all operational costs including heating, ventilation and air conditioning (HVAC), water, sewer, electricity, gas, telecommunications, interior janitorial and custodial services, interior building maintenance and repairs, fire alarm testing and monitoring, and HVAC maintenance. If any modification or improvement of the existing utility services is necessary for the applicant's use, the applicant will be responsible for the cost of such services. The City will be responsible for maintenance of wastewater and sewer lines up to the point of entry to the building under a lease scenario.
- The City is willing to lease the facility at a negotiated rate with the successful respondent. A standard City lease will need to be signed, though the rate can vary from market rate to no cost.
- The City will consider other operational agreements as well based on proposal components.
- Any property improvements made by the successful respondent(s) that are a part of the land or on-site facilities become the property of the City under a lease scenario.
- The City will negotiate the final disposition of existing furniture, fixtures and equipment with the successful respondent(s).
- The applicant may have the exclusive right to engage in the sale of food and/or beverages for non-private events.
- The City has committed \$1.375 million in ARPA funding towards proposed prioritized capital improvements. These include roofing, gutters, HVAC, and tunnel stabilization; however, the extent of repairs and replacement will not be finalized until design and construction bids are completed.
- The amount of any proposed capital investment and reinvestment will be a consideration in evaluating the term of any agreement. At the end of the agreement term, including the exercise of any option periods, all capital improvements shall become the property of the City unless alternative arrangements have been negotiated.
- Any rental or lease agreements in place as of the date of the notice to proceed shall be honored at the rates and times identified at the time of the agreement through the end of their existing lease period and then have the option to renegotiate with the new operator.

## EXHIBIT 6 – QUALIFICATION STATEMENT

This statement will provide information that will enable the City to evaluate the qualifications of your firm and staff with regard to the requirements of this Request for Proposal. Please complete this form in its entirety and submit it (in the number of copies requested) along with the other required proposal documents. If a request in the Qualification Statement is contained in the proposal, indicate the section in the proposal where that information can be found.

**(PRINT)**

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY STATE ZIP: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

TITLE: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

**1. TYPE OF BUSINESS**

**2. TYPE OF LICENSE & LOCATION**

CORPORATION

INDIVIDUAL

PARTNERSHIP

JOINT VENTURE

OTHER: \_\_\_\_\_

**3. TYPE OF SERVICE TO BE PROVIDED FOR RFP:** \_\_\_\_\_

**4. NUMBER OF YEARS IN BUSINESS:** \_\_\_\_\_

**5. ON A SEPARATE SHEET PROVIDE A BRIEF HISTORY OF YOUR FIRM, STAFF SIZE AND EXPERIENCE RELEVANT TO THIS RFP. SUBMIT A RESUME FOR THE PROJECT MANAGER AND EACH KEY PERSONNEL ASSIGNED TO THIS PROJECT.**

**6. WHAT OTHER NAME(S) HAS YOUR COMPANY OPERATED UNDER:** \_\_\_\_\_

**7. HAVE YOU OR YOUR FIRM EVER FAILED TO COMPLETE ANY WORK AWARDED TO YOU? YES  NO  IF "YES", EXPLAIN:**

**8. HAS ANY OFFICER OR PARTNER OF YOUR ORGANIZATION EVER BEEN AN OFFICER OR PARTNER OF ANOTHER ORGANIZATION THAT FAILED TO COMPLETE A CONTRACT WITHIN THE LAST FIVE (5) YEARS? YES  NO**

IF "YES", EXPLAIN:

**QUALIFICATION STATEMENT – PAGE 2**

9. HAS YOUR FIRM OR ANY PARTNERS OR OFFICERS EVER BEEN INVOLVED IN ANY BANKRUPTCY ACTION? YES  NO  IF "YES", EXPLAIN:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. ARE YOU PRESENTLY INVOLVED IN ANY LITIGATION WITH ANY GOVERNMENT AGENCY? YES  NO  IF "YES", EXPLAIN TYPE, KIND, PLAINTIFF, DEFENDANT, ETC., AND STATE THE CURRENT STATUS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. BANK REFERENCE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CONTACT: \_\_\_\_\_ PHONE: \_\_\_\_\_

12. LIST THREE (3) SIMILAR PROJECTS (LOCAL OR STATE-WIDE) **FROM LAST FIVE (5) YEARS**-INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT), CONTACT NAME, ADDRESS, TELEPHONE NUMBERS  
NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.

1. Location of Project: \_\_\_\_\_  
Size of Project: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_  
Contact Name and Title: \_\_\_\_\_  
Contract Address: \_\_\_\_\_  
Contact telephone and FAX Numbers: \_\_\_\_\_
2. Location of Project: \_\_\_\_\_  
Size of Project: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Contract Address: \_\_\_\_\_  
Contact telephone and FAX Numbers: \_\_\_\_\_
3. Location of Project: \_\_\_\_\_  
Size of Project: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Contract Address: \_\_\_\_\_  
Contact telephone and FAX Numbers: \_\_\_\_\_

13. LIST **CURRENT** SIMILAR PROJECTS (LOCAL OR STATE-WIDE) UNDER CONTRACT- INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT) CONTACT NAME, ADDRESS, TELEPHONE NUMBERS.  
NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.

1. Location of Project: \_\_\_\_\_  
Size of Project: \_\_\_\_\_

Contract Amount: \_\_\_\_\_  
Contact Name and Title: \_\_\_\_\_  
Contact Address: \_\_\_\_\_

Contact telephone and FAX Numbers: \_\_\_\_\_

2. Location of Project: \_\_\_\_\_  
Size of Project: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_  
Contact Name and Title: \_\_\_\_\_  
Contact Address: \_\_\_\_\_  
Contact telephone and FAX Numbers: \_\_\_\_\_

3. Location of Project: \_\_\_\_\_  
Size of Project: \_\_\_\_\_  
Contract Amount: \_\_\_\_\_  
Contact Name and Title: \_\_\_\_\_  
Contact Address: \_\_\_\_\_  
Contact telephone and FAX Numbers: \_\_\_\_\_

14. LIST OF SUB-CONTRACTORS TO BE USED FOR THIS PROJECT:  
(INCLUDE NAME, ADDRESS, TELEPHONE NUMBER, TYPE OF WORK)

1. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Type of Work: \_\_\_\_\_

2. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Type of Work: \_\_\_\_\_

3. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Type of Work: \_\_\_\_\_

**IF ADDITIONAL INFORMATION IS PROVIDED ON A SEPARATE SHEET FOR ANY OF THE ITEMS, CLEARLY SPECIFY WHERE IT CAN BE LOCATED IN YOUR PROPOSAL PACKAGE.**

**EXHIBIT 7 – SAMPLE EVALUATION SCORESHEET R21-132 NS**

**Proposer's Name:** \_\_\_\_\_

**Evaluator Number:** \_\_\_\_\_

Evaluation Criteria	Max Points
Business Plan/Project Approach	50
Programs and Services Matrix	40
Organizational Background	30
References	25
Proposal Presentation	5
Exceptions	Pass/Fail
Minimum Insurance Requirements	Pass/Fail
TOTAL	150

NOTES:

Proposal Weaknesses:

Strengths: