



## XX-XXX-Project Name

### Sample Agreement is intended for review only

**THIS AGREEMENT** made this \_ day of **MONTH, YEAR**, by and between the City of Wheat Ridge, Colorado, hereinafter referred to as the “City” or “Owner” and **Contractor Name, Contractor Address** hereinafter referred to as the “Contractor.”

**WITNESSETH**, that the City of Wheat Ridge and the Contractor agree as follows:

#### Article 1 – Services

The Contractor will serve as the City’s contractor and provide at a minimum all the professional services required as per RFx, as more fully described in the Request for XX (Exhibit A), the Vendor’s response to the RFx (Exhibit B) incorporated herein by reference.

#### Article 2 – Term

The work to be performed under this agreement may commence promptly after receipt of a fully-executed copy of the agreement, to the extent that the Contractor has been authorized to proceed by the City.

At the end of each year, if the City deems the Contractor’s performance acceptable and the pricing is consistent with the RFP response, the agreement may continue with automatic renewals. The agreement may be automatically renewed if:

- The work has not been completed per the agreed upon Statement of Work
- The City fails to contact your firm prior to the end of the current term regarding the desire to terminate.
- Pricing remains firm for the renewal period.
- The scope of work or specifications are not changed or modified.

If at the end of each year the City desires to rebid, or the Contractor’s performance is not acceptable, the City and Contractor may elect to continue the agreement on a month-to-month basis until the rebid process is complete.

#### Article 3 – Payment and Fee Schedule

It is understood and agreed by and between the parties hereto, that the City shall pay the Contractor for services provided, and the Contractor will accept a not-to-exceed amount of **dollars, (\$XX.XX)** annually as full payment for such services.

Pricing will remain firm for renewals.

The City operates on a calendar year as its fiscal year; as such, all invoices **must** be received no later than December 20, in order to be processed in the same calendar year.

##### A. Invoices by Task

Invoices will be submitted monthly by the Contractor for services performed and expenses incurred, pursuant to this agreement during the prior month. Payment is then made to the Contractor within thirty (30) days of receipt via Electronic Funds Transfer (EFT). The City may elect the alternative method of payment by the Treasurer’s Office through proper accounting procedures.

##### B. Funding

There is in effect within the City of Wheat Ridge, Colorado, a provision of the City’s Code of Laws which limits the amount for which the City shall be liable to the amount expressly appropriated by the City Council, either through budgeted appropriation, or contract or bid award. The contractor is specifically advised of the provisions of this portion of the Code of Laws of the City of Wheat Ridge, which was enacted pursuant to

Ordinance 787, Series of 1989, and expressly incorporated herein. This contract is specifically subject to the provisions of said Ordinance and adopted Code Section.

#### **Article 4 – No Damages for Delay**

Pursuant to Section 2-4 of the Code of Laws, Contractor agrees to waive, release or extinguish its right to recover costs or damages, or obtain an equitable adjustment, for delays in performing this contract if such delay is caused in whole or in part by acts or omissions of the City or its agents, provided however an extension of time is the Contractor's remedy for such delay.

#### **Article 5 - Escalation**

All prices/fees/wages offered in response to this RFP shall be firm against any increase for one (1) year after acceptance by the City. For subsequent periods, it shall be the vendor's responsibility to notify the City in advance of any anticipated changes in prices and submit a request for a price increase. This City limits price escalation requests to no more than one (1) rate adjustment per contract term. Increases anticipated to exceed 10% of the original cost will not be accepted, rather the City will resolicit at that time.

The City reserves the right to accept or reject the request for a price/fee/wage increase prior to the renewal option period. If the price/fee/wage increase is approved, prices will remain firm for a year from the date of increase, at a minimum.

#### **Article 6 -Sales and Use Taxes**

The City of Wheat Ridge is exempt from City, County, State, and Federal sales and excise taxes. Certificates will be issued upon request. City of Wheat Ridge Sales Tax Exempt: **98-03515**

#### **Article 7 – Independent Contractor**

In performing the work under this agreement, the Contractor acts as an independent contractor and is solely responsible for necessary and adequate worker's compensation insurance, personal injury and property damage insurance, as well errors and omissions insurance. The Contractor, as an independent Contractor, is obligated to pay Federal and State income tax on monies earned. The personnel employed by the Contractor are not and shall not become employees, agents, or servants of the City because of the performance of any work by this agreement. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person—other than bona fide employees working solely for the Contractor—any commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty the City will have the right to annul this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **Article 7 – Insurance**

In accordance with Article 7 above, the Contractor shall furnish a certificate of insurance upon notification of award, and prior to performance. Work shall not commence under this agreement until the Contractor has submitted to the City and received approval thereof, a certificate of insurance showing compliance with the following minimum types and coverages of insurance:

<b>Type of Insurance</b>	<b>Minimum Limits of Liability</b>
Worker's Compensation, Coverage A	Statutory, including occupational disease coverage for all employees at work site.
Employer Liability, Coverage B	\$500,000 per person \$500,000 per accident \$500,000 each disease

Commercial General Liability ( <i>including Premises-Operations, Independent Contractor's Protective, Broad Form Property Damage, and Contractual Liability</i> ) <ul style="list-style-type: none"> <li>• Bodily Injury</li> <li>• Property Damage</li> </ul>	\$1 million per occurrence \$2 million aggregate  \$1 million per occurrence \$2 million aggregate
Comprehensive Automotive Liability ( <i>owned, hired, and non-owned vehicles</i> ) <ul style="list-style-type: none"> <li>• Bodily Injury</li> <li>• Property Damage</li> </ul>	\$2 million per occurrence \$2 million per occurrence

***An endorsement covering any explosion, collapse, and underground exposures, "XCU," in the Commercial General Liability policy is also required. The City of Wheat Ridge shall be named as additional insured on all liability policies. Insurance shall include provisions preventing cancellation without 30 days prior notice by certified mail to the City.***

Nothing herein shall be deemed or construed as a waiver of any of the protections to, which the agencies may be entitled pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, CRS, as amended.

#### Article 9 – Indemnification

The Contractor agrees to indemnify, defend, and to hold the City and its agents, officials, officers and employees harmless for, from and against any and all claims, suits, expenses, damages, or other liabilities—including reasonable attorney fees and court costs arising out of damage or injury to persons, entities, or property causes or sustained by any person or persons to the extent caused by the negligent, acts, omissions, performance or failure of the Contractor to provide services pursuant to the terms of this agreement.

#### Article 10 – Equal Employment Opportunity

The Contractor shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, or national origin. The Contractor shall adhere to acceptable affirmative action guidelines in selecting employees and shall ensure that employees are treated equally during employment, without regard to age, race, color, religion, sex, or national origin. Such action 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices provided by the local public agency setting forth the provisions of this nondiscrimination clause.

The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor—provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

#### Article 11 – Charter, Laws, and Ordinances

The Contractor at all times during the performance of this agreement, agrees to strictly adhere to all applicable Federal, State, and local laws, rules, regulations, and ordinances that affect or govern the work as contemplated under this agreement.

#### Article 12 – Law and Venue

The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this agreement. The parties agree that venue and jurisdiction for disputes regarding performance of this contract is with the District Court of Jefferson County, Colorado.

## Article 12 – Termination

The Contractor acknowledges that his failure to accomplish the work as described shall be considered a material breach of the contract and entitle the City to consequential damages resulting from failures, acts, or omissions—including, but not limited to re-procurement costs, insufficient or improper work.

The City and the Contractor agree that this agreement may be canceled for cause by either party, with a fifteen (15) day prior written notice. The cost of completing the portion of the work which remains unperformed at the time of such termination shall be deducted from the contract price before payment is made.

The City may terminate the agreement for its convenience, upon thirty (30) days written notice. In the event of such termination the Contractor will be paid for all work and expenses incurred up until the time of such termination.

All work accomplished by the Contractor prior to the date of such termination shall be recorded, and tangible work documents shall be transferred to and become the sole property of the City, prior to payment for services rendered.

## Article 14 – Notices

Contact Information	City	Contractor
Name:		
Office Phone:		
Email Address:		
Address:		
City, State, Zip Code:		

## Article 15 – Assignment and Subcontractors

The duties and obligations of the Contractor arising hereunder cannot be assigned, delegated, nor subcontracted except with the express written consent of the City. The subcontractors permitted by the City shall be subject to the requirements of this agreement, and the contractor is responsible for all subcontracting arrangements, as well as the delivery of services as set forth in this agreement. The contractor shall be responsible for the performance of any subcontractor.

## Article 16 – Severability

To the extent that the agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the agreement, the terms of this agreement are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

## Article 17 – Integration of Understandings

This agreement is intended as the complete integration of all understanding between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force and effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in writing and signed by an authorized representative of the City and the contractor.

## Article 18 - Disadvantaged Business Enterprises

Disadvantaged business enterprises are afforded full opportunity to submit bids and will not be discriminated against on the grounds of race, color or national origin in consideration for an award. Consultants shall insert this provision in all sub-contracts for any work covered by this Agreement, so that it shall be binding upon each sub-consultant or sub-contractor providing labor or services.

## Article 19 – Ownership of Contract Products

All products produced from the awarded contract shall be the sole property of the City.

## Article 20 – Personally Identifiable Information (PII) and Open Records Act

Contractors, consultants, business partners and vendors that handle, process, or work in areas where personally identifiable information may reside in hard copy or electronic records must maintain the confidentiality of all Personally Identifiable Information (PII). Violation may result in contractual penalties and termination of the business relationship with the City. In extreme cases criminal punishment under Colorado Law (C.R.S. § 24-73-101) may occur. Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act, CRS 24-72-201, et seq., (“The Act”) and that all documents, correspondence, email messages and other communications between the Contractor and the City are subject to public disclosure under the provisions of that Act, with limited exceptions for proprietary information, business secrets, and similar information. Contractor shall identify all proprietary and confidential information on the document or communication itself. In the event the City receives a request for disclosure of such information under the Act, Contractor agrees to indemnify the City against any attorney fees and court costs incurred by the City in defending its refusal to disclose such information.

## Article 21 - Accessibility

Contractor(s) and solutions complies with all applicable provisions of §§24-85-101, et seq., C.R.S., [1] and the Accessibility Standards for Individuals with a Disability, as established by the Office Of Information Technology pursuant to Section §24-85-103(2.5). Contractor also complies with the latest version of Level AA of the Web Content Accessibility Guidelines (WCAG), currently version 2.1, as described in State of Colorado Technical Standard TS-OEA-002, Technology Accessibility for Web Content and Applications when developing solutions for the state.

The Contractor agrees to indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to the Contractor’s failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103(2.5).

Any additional costs to add accessibility features will be the obligation of the Contractor, and any addition or change to the Price Proposal will be disallowed.

## Article 22 - Cooperative Procurement

The City of Wheat Ridge encourages and participates in cooperative procurement endeavors undertaken by or on behalf of other governmental agencies including the Multiple Assembly of Procurement Officials (MAPO) and the Cooperative Educational Purchasing Council (CPEC).

Contractors are hereby advised that any member of MAPO/CPEC is permitted to avail itself of this contract at the prices resulting from the successful award of this contract.

## Article 23 – Vendor Performance Feedback

The City of Wheat Ridge has implemented a requirement for Project Managers to assess each vendor’s performance and issue a determination as to whether the City should award the vendor future City contracts. All contracts will need to be considered as part of the requirement. The following criteria will be evaluated annually for renewable contracts and at contract closeout for one-time agreements:

- a. Work completed on time

- b. Work completed within budget
- c. Work completed as per the Scope of Work
- d. Future Award Recommendation

#### Article 24 – Internal Team Review

Each party has reviewed the items contained within this contract and recommend executing this contract to proceed with the agreed upon Statement of Work.

\_\_\_\_\_  
Whitney Mugford-Smith, Procurement Manager

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
[RESERVED FOR PM], Project Manager/ Team Lead

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
[RESERVED FOR DIR], Department Director

\_\_\_\_\_  
Date Signed

Article 25 – Authorization

Each party represents and warrants that it has the power and ability to enter into this agreement, to grant the rights granted herein, and to perform the duties and obligations described herein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in two (2) copies, each of which shall be deemed an original on the day and year first written above.

**Attest:**

\_\_\_\_\_  
Steve Kirkpatrick, City Clerk

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
Gerald Dahl, City Attorney

**Attest to Contractor:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Owner**

CITY OF WHEAT RIDGE  
7500 W. 29<sup>TH</sup> AVENUE  
WHEAT RIDGE, CO 80033  
303-234-5900

\_\_\_\_\_  
Patrick Goff, City Manager

**Contractor**

NAME  
ADDRESS  
CITY, STATE, ZIPCODE

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date