

## Appendix 4

### Section 1.0: City's General Contract Terms and Conditions

- 1.1. **Americans with Disability Act (ADA) Compliance Mandate:** Following HB21-1110, all documents produced, delivered, or exchanged under this Contract must adhere to the provisions outlined in §§24-85-101, C.R.S., and subsequent sections, as well as the Accessibility Standards for Individuals with a Disability, as established by the Office of Information Technology under section §24-85-103 (2.5), C.R.S. Additionally, all documents must align with the State of Colorado's technology standards related to accessibility, including Level A.A. compliance with the current version of the Web Content Accessibility Guidelines (WCAG) as incorporated into the State of Colorado's technology standards.
- 1.2. **The City:** The City will act by and through its authorized representative(s).
- 1.3. **Compliance:** By executing the Contract, the Firm acknowledges and agrees to comply with all applicable terms, conditions, and requirements set forth or incorporated by reference herein. In the event of any conflict, ambiguity, or omission in the City's Terms and Conditions or within the Contract documents that may affect the Firm's understanding of its obligations, it is the Firm's responsibility to seek clarification from the City prior to proceeding. Failure to request such clarification shall not relieve the Firm of its responsibility to perform in full compliance with the Contract.
- 1.4. **Controlling Authority:** The 2024 version of the City [Procurement Policy](#) is controlling.
- 1.5. **Public Disclosure Notice:** Pursuant to the Colorado Open Records Act (CORA), all materials submitted in response to the Contract shall be considered public records and may be subject to public disclosure, except for information specifically designated as confidential, proprietary, or trade secret by the Firm, and only to the extent permitted by law.

Upon award and execution of a contract, the Firm's proposal (Scope of Services) shall be available for public inspection in accordance with CORA and upon receipt of an [Open Records Request](#).

Public disclosure is also subject to the applicable provisions of CORA in the event the solicitation or resulting project is canceled.

- 1.6. **Public Disclosure Record:** If the Firm knows its employees or subcontractors have an immediate family relationship with a City employee or elected official, the Firm must provide the Purchasing Division with the name(s) of that/those individual(s). The

individual(s) must file a "Public Disclosure Record" and/or a statement of financial interest before conducting business with the City.

- 1.7. **Collusion Clause:** The Firm certifies that it has not been involved in any collusive action(s) or activity(ies) that violate applicable federal or state antitrust laws, rules, or regulations in connection with this Contract. If collusion is discovered at any performance stage, the City reserves the right to terminate this Contract immediately and pursue all available legal remedies. At its discretion, the City may disqualify the Firm from consideration for future contracts.
- 1.8. **Gratuities and Kickbacks:** The Firm certifies that no gratuities, kickbacks, or contingent fees have been or will be offered, solicited, or paid in connection with this Proposal or any resulting Contract. This includes, but is not limited to, the offering or payment of commissions, gifts, or other considerations contingent upon a Contract's award. If the Firm breaches this certification, the City reserves the right to terminate the Contract immediately without liability and may pursue all available legal remedies.
- 1.9. **Ethics:** The Firm shall not offer, give, solicit, or accept gifts, favors, or anything of value to or from any employee, official, or agent of the City that could influence, or appear to influence, the procurement process. Additionally, the Firm shall not enter into any business arrangement or financial relationship with any such individuals that may create a conflict of interest or undermine public trust. Any violation of this provision may result in disqualification from consideration, contract termination, and potential legal consequences.
- 1.10. **Contract Documents:** The Contract Documents include the Firm's submitted proposal and supporting documents, and any negotiations when formally accepted by the City and memorialized by written agreement. These documents collectively constitute a binding and enforceable Agreement ("Contract") between the City and the Firm upon acceptance. The Contract represents the entire and integrated agreement between the City and the Firm ("Parties") and supersedes all prior negotiations, representations, or agreements, whether written or oral. Any modifications or amendments to this Contract must be made through a duly executed Change Order or Contract amendment.
- 1.11. **Open Records/Confidential Material:** All materials submitted with the Firm's proposal shall become public records and, upon contract award, shall be subject to public inspection under the Colorado Open Records Act (CORA).

For the purposes of this provision, "**Proprietary or Confidential Information**" refers to information that is not generally known to competitors and provides a competitive advantage. The unrestricted disclosure of such information places it in the public domain and eliminates any claim of confidentiality.

Firm(s) seeking to designate specific information as confidential or proprietary must:

- 1.11.1. Clearly mark each page or section of the proposal containing such information with the words "**Confidential Disclosure.**"

- 1.11.2. Provide confidential information as a separate file; and
- 1.11.3. Provide a written explanation justifying the claim of confidentiality, specifying how disclosure would cause substantial harm to the Firm's competitive position, consistent with CORA.

The City shall review all confidentiality requests. The final determination of whether materials qualify for confidential treatment rests solely with the City. If a confidentiality request is denied, the Firm(s) can withdraw its proposal or remove the contested confidential or proprietary information before the proposal is made publicly available.

Notwithstanding the foregoing, the following materials shall not be considered confidential or proprietary under any circumstances:

- Cost or pricing information.
- The entirety of a proposal submission.

Failure to comply with these requirements may result in the information being deemed public and subject to disclosure under CORA. The City assumes no responsibility for protecting information not properly designated and submitted under this section.

- 1.12. **Taxes:** The City is exempt from State, County, and Municipal Taxes and Federal Excise Taxes; therefore, all fees shall not include taxes.
- 1.13. **Sales and Use Taxes:** The Firm and all subcontractors must obtain exemption certificates from the Colorado Department of Revenue for sales and use taxes. Proposals shall reflect the removal of Sales and Use Tax on materials, fixtures, and equipment.
- 1.14. **Federal Taxpayer Identification Certificate:** Successful Firm(s) new to conducting business with the City must furnish a completed standard "Federal Taxpayer Identification Certificate (W-9)" before the Contract is executed. Additionally, the City reserves the right to request a current W-9 from established business relationships as necessary.
- 1.15. **Execution, Correlation, Intent, and Interpretations:** The Contract Documents shall be signed by the City and the Firm. By executing the Contract, the Firm represents that it has familiarized itself with the conditions under which the Services/Use shall be performed and correlated its/his/her observations with the requirements of the Contract Documents. The Contract Documents are complementary, and what is required by anyone shall be as binding as if required by all. The Contract Documents intend to include all labor, materials, equipment, services, and other items necessary for the proper execution and completion of the Scope of Services as defined in the specifications contained herein.
- 1.16. **Responsibility for those Performing the Services or Use:** The Firm is fully responsible for the actions and omissions of its/his/her employee(s), subcontractors, and any other individual(s) performing any of the Services or Use under the Contract.

- 1.17. Payment & Completion:** As stated in the Contract, the Contract Sum represents the total amount payable by the City to the Firm for performing the Services/Use under the Contract. Upon completion of the required deliverables, the Firm shall submit a written notice confirming readiness for final inspection and a detailed invoice for payment. The City's Project Manager will promptly conduct an inspection, and when the Services/Use are found in compliance with the Contract and satisfactorily completed, payment shall be processed as outlined in the Contract Documents.

All Services provided by the Firm shall adhere to generally accepted professional practices and maintain a level of competency consistent with industry standards for similar Services/Use. Additionally, all Services/Use must fully comply with applicable laws, ordinances, and regulations.

- 1.18. Changes in the Services:** The City may request changes to the Services/Use within the general scope of the Contract, including additions, deletions, or other modifications. Such changes shall not invalidate this Contract but may require an adjustment to the Contract sum or Contract time.

No change shall be considered authorized, approved, or binding until both Parties fully execute a written Change Order. The Firm shall not proceed with any changes until the Change Order is fully executed.

All changes must be authorized through a written Change Order, signed by both Parties and executed under the applicable conditions of the Contract Documents. No Contract sum or Contract time adjustments shall be made except through an approved Change Order.

- 1.19. Minor Changes in the Services or Use:** The City may authorize minor changes to the Services that do not alter the Contract sum, extend the Contract time, or conflict with the intent of the Contract Documents.

- 1.20. Correction of Services or Use:** The Firm shall perform all services following industry standards, utilizing the prevailing skill, care, and expertise expected in the relevant market or industry. Should any services be non-compliant with the Contract requirements, the Firm shall bear all responsibility for the same and promptly correct all deficiencies to satisfy prevailing industry standards at no additional cost to the City.

The Firm shall bear all costs associated with correcting the non-conforming services, including any additional work required by the City as a direct result of the deficiencies. If the Firm fails to remedy the non-conformance promptly, the City reserves the right to take corrective action and recover all related costs from the Firm.

- 1.21. Acceptance Not Waiver:** The City's acceptance or approval of any Services/Use provided herein shall not relieve the Firm of its ongoing obligation to uphold the requisite standards of quality, integrity, and timeliness of its services. The City's approval or acceptance of, or remittance of payment for any Services/Use shall not be construed as a future waiver of any rights under this Contract, nor shall it constitute a waiver of any potential claims arising from the performance under this Contract.

- 1.22. Change Order or Amendment:** No oral statement or representation by any individual shall modify, change, or affect the terms, conditions, or specifications of the Contract. All amendments or change orders to the Contract must be executed in writing by the City's Contract Administrator. Such executed modifications are the sole method for altering the Contract and must comply with the City's established procedures.
- 1.23. Assignment:** The Firm shall not sell, assign, transfer, or convey the Contract resulting from this Solicitation, in whole or in part, without the prior written approval of the City.
- 1.24. Compliance with Laws:** The Firm shall comply with all applicable federal, state, county, and municipal laws, codes, regulations, ordinances, and requirements and ethical standards governing the Services performed under the Contract.

The Firm warrants that it is fully qualified to perform the required Services and possesses all necessary corporate authority, skills, credentials, experience, and professional licenses, which shall remain in good standing as required by law throughout the duration of the Contract.

- 1.25. Debarment/Suspension:** The Firm hereby certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from providing Services.
- 1.26. Confidentiality:** [if applicable and appropriate] To the extent applicable to the performance of the Services, the Firm shall maintain in strict confidence all non-public information, data, or materials disclosed by the City or obtained in connection with this Contract. The Firm shall take reasonable measures to safeguard such information and ensure compliance with this obligation by its employees, subcontractors, and agents. This obligation shall not apply to information required to be disclosed by law or court order, provided the City is given prompt notice of such requirement when legally permissible.
- 1.27. Conflict of Interest:** No officer, official, or employee of the City shall have any financial or personal interest, direct or indirect, in this Contract or its resulting services. The Firm shall disclose any actual or potential conflicts of interest that may arise in connection with this Contract. All such matters shall be addressed in accordance with applicable federal, state, and local laws, as well as the City's conflict of interest policies and procedures.
- 1.28. Contract Termination:** The Contract shall remain in effect until any of the following occurs: (1) Contract expires; (2) completion of Services; (3) final acceptance of Services; or (4) for convenience terminated by either party with a written *Notice of Cancellation* stating therein the reasons for such cancellation and the effective date of cancellation at least thirty days past notification.
- 1.29. Employment Discrimination:** During the performance of any Services, the Firm agrees to:

- 2.1.1. The Firm shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, citizenship status, marital status, veteran status, sexual orientation, national origin, or any legally protected status except when such condition is a legitimate occupational qualification reasonably necessary for the normal operations. The Firm agrees to post notices in conspicuous places, visible to employees and applicants for employment, setting forth the provisions of this nondiscrimination clause.
- 2.1.2. All solicitations or advertisements for employees placed by or on behalf of the Firm shall state that the Firm is an Equal Opportunity Employer.
- 2.1.3. Notices, advertisements, and solicitations placed following federal law, rules, or regulations shall be deemed sufficient for meeting the requirements of this section.

**1.30. Immigration Compliance:** The Firm certifies that it fully complies with the **Immigration Reform and Control Act of 1986** and all applicable federal, state, and local immigration laws. The Firm shall not employ or subcontract with any individuals who are unauthorized to work in the United States during the performance of the Contract. Any violation of this requirement may result in the termination of the Contract and potential legal consequences.

**1.31. Failure to Perform:** If the Firm fails to fulfill its obligations under the Contract—including, but not limited to, timely delivery of services, adherence to quality standards, or compliance with reporting and coordination requirements—the City may, after providing oral or written notice (with any oral notice documented in the contract file), procure substitute services, use, or materials from alternate sources. The Firm shall be liable for any additional costs or damages incurred by the City as a result.

In instances of nonperformance, the City may pursue progressive corrective actions, as appropriate. However, if the failure materially affects project outcomes, threatens public safety, or disrupts the continuity or integrity of services, the City reserves the right to take immediate action, including suspension or termination of the Contract.

**1.32. Failure to Enforce:** The City's failure to enforce any provision of the Contract at any time shall not constitute a waiver of that provision or any other rights under the Contract. Such non-enforcement shall not affect the validity of the Contract or any part thereof, nor shall it preclude the City from enforcing any provision of the Contract later under the terms thereof.

**1.33. Force Majeure:** The Firm shall not be held liable for failure to perform its contractual obligations due to events beyond its reasonable control, including but not limited to legal strikes, fires, riots, civil disturbances, acts of God, or other unforeseen circumstances. This exemption shall not apply if the Contract specifies otherwise. The Firm must provide prompt written notice to the City of any such event preventing

performance and shall make all reasonable efforts to mitigate delays or disruptions caused by the force majeure event.

- 1.34. Indemnification:** The Firm shall defend, indemnify, and hold harmless the City, along with its officers, employees, insurers, and self-insurance pool, from and against any and all liabilities, suits, actions, claims, demands, damages, losses, or expenses of any kind, including attorney's fees, arising out of or related to any injuries, damages, or losses to persons or property caused by the negligent act, error, omission, or fault of the Firm, its agents, employees, subcontractors, or suppliers in the execution or performance of the Contract.

The Firm shall be responsible for satisfying any judgment, settlement, or associated costs incurred by or awarded against the City due to such claims. This indemnification obligation shall survive the termination or expiration of the Contract.

- 1.35. Independent Firm:** The Firm is and shall remain an independent firm in all respects under the Contract. Neither the Firm nor its employees, agents, or subcontractors shall be considered employees, representatives, or agents of the City for any purpose.

The City assumes no liability for any negligence, misconduct, or other wrongful acts committed by the Firm, its employees, agents, or subcontractors. The Firm is solely responsible for all applicable taxes, including federal and state income taxes, unemployment taxes, Social Security contributions, and any other required withholdings.

Additionally, the Firm is not entitled to any benefits the City provides to its employees, including but not limited to health insurance, retirement benefits, or Workers' Compensation coverage.

- 1.36. Patents and Copyrights:** The Firm agrees to defend, indemnify, and hold harmless the City, its officers, employees, and agents from and against any and all claims, demands, liabilities, damages, judgments, costs, or expenses, including but not limited to attorneys' fees, arising from actual or alleged infringement of any patent(s), copyright(s), trademark(s), trade secret(s), or other intellectual property right(s) in connection with the Firm's performance under this Contract. The City shall have no liability to the Firm for any such claims, damages, or costs incurred due to infringement by the Firm.

The Firm expressly warrants that the Services provided under this Contract do not and will not infringe upon any patent, copyright, trademark, trade secret, or other intellectual property right of any third party. In the event of any such infringement or alleged infringement, the Firm shall, at its sole expense, procure for the City the right to continue using the affected Services, replace or modify the infringing material to make it non-infringing, or provide a functionally equivalent alternative acceptable to the City.

Any determination that the Firm has engaged in patent(s), copyright(s), or intellectual property right(s) infringement shall render this Contract null and void. However, such nullification shall not affect the City's right to seek indemnification under **Section 1.34** and this provision.

- 1.37. Governing Law:** The Contract and/or any agreement(s) resulting from the Firm's proposal or scope of services shall be deemed to have been made in, and shall be construed and interpreted by, the laws of the City of Grand Junction, Mesa County, Colorado. Any action arising from or under this Contract shall be in the District Court 21<sup>st</sup> Judicial District, Mesa County, Colorado.
- 1.38. Expenses:** The City shall not reimburse, nor shall the Firm charge, any costs incurred in preparing, submitting, or presenting a proposal or scope of services.
- 1.39. Sovereign Immunity:** The City expressly reserves and asserts all rights, privileges, and defenses available under Colorado's Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as well as all applicable case law interpreting and construing the same. Nothing in this solicitation or any resulting contract award shall be construed as a waiver of the City's sovereign immunity.
- 1.40. Public Funds and Non-Appropriation of Funds:** Payment for services under this Contract is contingent upon funds appropriated by the City's approved budget for the applicable fiscal year. Under Colorado law, public funds cannot be obligated or expended beyond the fiscal year for which a budget has been approved.

Accordingly, any contractual commitments extending beyond the fiscal year are subject to future budget approvals. This Contract shall include a non-appropriation of funds clause, ensuring compliance with Colorado law. If funds are not appropriated for subsequent fiscal years, the City reserves the right to terminate the Contract without penalty or liability.

- 1.41. Performance of the Contract:** In the event of a breach or default, the City reserves the right to enforce the terms of the Contract through any legal or equitable means deemed in the City's best interest. The City may pursue all available remedies as prescribed by law to ensure compliance with the contractual obligations.
- 1.42. Default:** The City reserves the right to terminate the Contract if the Firm materially breaches any of its obligations, including failure to perform services in a timely, competent, or professional manner; failure to comply with project requirements, administrative procedures, or reporting obligations; or violation of applicable laws, regulations, or contract terms.

Prior to termination, the City will provide written notice of the default and allow the Firm a reasonable opportunity to cure the issue, unless the breach presents an immediate risk to public health, safety, or the City's operations.

If the Firm fails to cure the default within the time specified in the notice, the City may take appropriate corrective action, including procuring substitute services from

another provider, and may hold the Firm responsible for any resulting costs, damages, or losses.

This remedy is in addition to, and does not limit, any other rights or remedies available to the City under this Contract, at law, or in equity.

**1.43. Definitions:** Unless otherwise stated, the following definitions shall apply throughout this solicitation and any resulting Contract. Additional terms may be defined within specific sections or added as necessary to clarify intent and ensure consistency in interpretation.

**1.43.1.** “Agency,” “Consultant,” “Contractor,” or “Firm” refers to the individual, organization, business entity, or other legal entity identified in the proposal and throughout the Contract. This term includes the Firm’s authorized representatives, employees, subcontractors, and agents responsible for fulfilling the obligations of the Contract.

**1.43.2.** “Change Order” is a formal written directive issued after Contract execution that authorizes a modification to the Services, Contract sum, or Contract time

**1.43.3.** “City” means and refers to the City of Grand Junction, Colorado, including its departments, officials, employees, and authorized representatives.

**1.43.4.** The “Contract Sum” refers to the total amount payable by the City to the Firm for the full and satisfactory completion of the required Services. This sum includes all materials, labor, equipment, services, and any other obligations specified in the Contract Documents.

The Contract Sum may be structured as a Fixed Lump Sum, Guaranteed Maximum Price (GMP), or a Not-to-Exceed amount, as defined in the Contract Documents. Any modifications to the Contract Sum shall be made under the provisions of the Contract and must be duly authorized by both Parties.

**1.43.5.** “Contract Time” means the period during which the Firm is obligated to perform the Services under this Contract, beginning on the effective date specified in the Notice to Proceed or other written authorization issued by the City, and continuing through the date of completion, expiration, or termination as set forth in the Contract Documents. Contract Time may be extended or reduced only by a duly executed written amendment or change order.

**1.43.6.** “Key Personnel” refers to the designated individual(s) from the Contractor, Consultant, or Firm who are essential to the successful execution and completion of the Services. These individuals possess specialized skills, knowledge, or experience critical to fulfilling the scope of services outlined in the Contract. Any changes to Key Personnel may require prior approval from the City, as specified in the Contract Documents.

**1.43.7.** “Proposer” refers to the individual or entity legally authorized by the Contractor, Firm, or Consultant to submit a proposal in response to this solicitation. This includes submitting pricing or fee proposals and making formal offers on behalf of the proposing entity.

- 1.43.8.** “Project” or “Use” refers to the endeavor outlined in this solicitation that encompasses the required product, service, or deliverable specified in the Contract Documents.
- 2.1.4.** “Services” include all labor, materials, equipment, and professional expertise necessary to complete the Use and fulfill the requirements outlined in the Contract Documents.
- 1.43.9.** “Subcontractor” refers to any individual, entity, or organization with a direct contractual agreement to perform a portion of the Services under the Contract. The term “Subcontractor” includes the subcontractor’s authorized representatives.

## **Section 2.0. Insurance Requirements**

At its own expense, the successful Firm shall procure and maintain, for the duration of the Contract, comprehensive insurance policies with insurers rated A- or better by A.M. Best, authorized to do business in Colorado, and in forms acceptable to the City. Coverage shall be sufficient to satisfy all liabilities, claims, demands, and obligations arising out of the Firm’s performance of Services under the Contract.

This insurance coverage shall meet or exceed any additional insurance requirements imposed by the Contract or by law. The Firm’s failure to procure or maintain adequate coverage, in the required amounts, duration, or types, shall not relieve the Firm of any liabilities or obligations assumed under the Contract. Furthermore, the Firm shall ensure that all such insurance remains in full force and effect throughout the term of the Contract.

The Firm shall require and ensure that any subcontractors maintain insurance meeting these same requirements. The required coverage must be maintained continuously to address all liabilities, claims, demands, and obligations assumed by the Firm under the Contract. To ensure continuous coverage, the Consultant shall obtain and maintain appropriate retroactive dates and extended reporting periods for any claims-made insurance policies. Unless otherwise specified in the Special Conditions, the minimum coverage limits shall be as follows:

**(a) Commercial General Liability**

ONE MILLION DOLLARS (\$1,000,000) for each occurrence, and  
TWO MILLION DOLLARS (\$2,000,000) general aggregate.

The policy shall apply to all premises, products, and completed operations. It shall include coverage for bodily injury, broad-form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual products, and completed operations. The policy shall contain a provision for severability of interest.

**(b) Professional Liability Errors and Omissions**

ONE MILLION DOLLARS (\$1,000,000) per claim, and

TWO MILLION DOLLARS (\$2,000,000) aggregate

Continuous coverage or an extended reporting period shall be maintained for at least five (5) years after services are completed.

- (c) **Automobile Liability** with minimum combined single limits for bodily injury and property damage of not less than:

ONE MILLION DOLLARS (\$1,000,000) for each accident

Applies to owned, non-owned, and hired vehicles used in the performance of the Services.

- (d) **Workers' Compensation and Employers' Liability**

- Workers' Compensation: Statutory coverage as required under Colorado law.
- Employers' Liability: Minimum limits of **One Million Dollars (\$1,000,000)** each accident, each employee for disease, and policy limit for disease.
- Policy shall include a waiver of subrogation endorsement in favor of the City

**3.1. Additional Insured Endorsement:** The **Commercial General Liability** and **Automobile Liability** policies required under this Contract shall be endorsed to include the City, its elected and appointed Officials, employees, and volunteers as Additional Insureds. Every required policy above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, or carried by or provided by any insurance pool of the City, shall be excess and not contributory insurance to that provided by the Contractor. The Firm shall be solely responsible for any deductible losses and self-insured retentions.

**3.2. ACCORD Certificate of Insurance:** Certificates evidencing all required coverages and applicable endorsements shall be submitted to the City prior to the commencement of any Services or execution of any Use under this Contract. Certificates shall reference the Contract title and number, clearly identify all coverage limits, and include copies of all required endorsements.

The Firm shall maintain current Certificates of Insurance throughout the term of the Contract and shall provide updated certificates to the City upon renewal, replacement, or modification of any policy.