

CITY OF CHERRY HILLS VILLAGE

2450 East Quincy Avenue
Cherry Hills Village, CO 80113
303-789-2541



**Request for Proposals for:
Civil Engineering Services**

This Request for Proposals (“RFP”) is not a competitive bid based solely on price. The RFP and City purchase policies allow the City to select the proposal that best meets the City’s needs and requirements.

July 7, 2022

TABLE OF CONTENTS

| <u>Subject</u> | <u>Page</u> |
|---|-------------|
| Notice of Proposal | 2 |
| Proposal Instructions | 3 |
| Information about Cherry Hills Village | 12 |
| Disclosure Statement (Attachment 1) | 13 |
| Scope of Services Cost Tables (Attachment 2) | 14 |
| Form of Professional Services Agreement (Attachment 3) | 15 |

PROPOSAL NOTICE
REQUEST FOR PROPOSALS
CIVIL ENGINEERING SERVICES 2023-2028

The City of Cherry Hills Village, Colorado, (hereafter “City”) respectfully requests sealed proposals for Civil Engineering Services. **Proposals will be received until 4:00 p.m. (Mountain Time) on Friday, August 12, 2022**, at the office of the City Manager/Director of Community Development, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113.

Late proposals will not be accepted. Any proposal(s) received after the scheduled time for closing will not be opened or reviewed and will be rejected upon receipt. Sole responsibility rests with the proposing Consultant to see that their proposal is received on time.

The City reserves the right to reject all proposals, or to reject any proposal in part or in whole, and to award the proposal to the most responsive and responsible Consultant as deemed in the best interest of the City. Further, the right is reserved to waive any formalities or informalities contained in this proposal, to extend the deadline for the receipt of proposals, and to negotiate with one or more Consultants regarding desired modifications in the proposed work.

PROPOSAL INSTRUCTIONS

I. Introduction

The City wishes to acquire the services of a Civil Engineering Consultant (hereafter “Consultant”) that has experience in providing civil engineering services on behalf of a municipality. To be eligible for consideration, the proposing Consultant must be capable of providing the services noted herein and must also meet all other criteria outlined in this RFP.

The ideal Consultant will have the ability to have a presence at City Hall for at least 8 hours a month to answer questions, meet with applicants, and coordinate plan review with City staff. The Consultant will be expected to respond to engineering related inquiries, review and provide comments on building permits related to compliance with the City’s civil engineering requirements, review and provide comments on land use applications related to civil engineering requirements, provide expertise related to stormwater and floodplain matters, and help the City with Community Rating System (CRS) audits. Effective communication is expected between the selected Consultant, applicants, and the City’s departments.

II. Inquiries and Corrections

Any questions or clarifications should be directed to:

Paul Workman
Planning Manager/Floodplain Administrator
City of Cherry Hills Village
2450 East Quincy Avenue
Cherry Hills Village, CO 80113
(303)783-2729
pworkman@cherryhillsvillage.com

If a Consultant submitting a proposal finds discrepancies in or omissions from this Request for Proposal (“RFP”), or requires additional clarification of any part thereof, they should contact the Planning Manager/Floodplain Administrator **by email**. Any interpretation or change made to the RFP will be made by written addendum and shall become part of the request for any contract awarded. The City will not be responsible for the accuracy of or be bound by any oral explanations, interpretations, or representations.

III. Submission Date, Location, and Opening

The Cherry Hills Village City Manager/Director of Community Development, City of Cherry Hills Village, 2450 E. Quincy Avenue, Cherry Hills Village, CO 80113 must receive all proposals **prior to 4:00 p.m. (Mountain Time), on August 12, 2022**. Proposals must be submitted in a sealed envelope plainly marked “Request for Proposals – Civil Engineering Services”. **Electronic submittals will not be accepted and will not be evaluated.**

IV. RFP Process

| SCHEDULE | |
|--|----------------------------|
| Post on the City’s website and Rocky Mountain BidNet. | July 7, 2022 |
| Deadline to submit questions or requests for more information. | July 21, 2022 |
| Answers to questions will be posted on the City’s website and Rocky Mountain BidNet. | July 28, 2022 |
| RFP submission deadline (complete proposals must be received by 4:00pm – Mountain Time). | August 12, 2022 |
| Presentations/Interviews (if necessary). | Week of August 29, 2022 |
| Anticipated final selection. | Week of September 12, 2022 |
| Anticipated Council action on the Professional Services Agreement | November 15, 2022 |
| Start of services. | January 1, 2023 |

V. Late, Faxed, or Electronic Proposals

Late proposals will not be accepted and will not be opened or reviewed and will be rejected upon receipt. In addition, faxed and/or proposals sent by electronic devices are not acceptable and will be rejected upon receipt. Proposing Consultants will be expected to allow adequate time for delivery of their proposals.

VI. Proprietary Information

The City operates under public disclosure laws as part of normal procedures. All information included in the proposal that is of a proprietary nature must be clearly marked as such. If anything in a proposal is marked “confidential,” “proprietary,” or otherwise states an intention to protect the information from disclosure, the City cannot guarantee that such demarcation is sufficient to prevent disclosure by law. All proposals shall become the property of the City and shall be held, controlled, manipulated, and retained by the City in accordance with the City’s policies and records retention schedule and applicable law, including the Colorado Open Records Act, C.R.S. § 24-72-401 *et seq.* (“CORA”).

The City shall be held harmless from any claims arising from the release of proprietary information not clearly designated as such by the proposing Consultant.

VII. Definition, Context, and Gender

Unless otherwise specified in this document, all words shall have a common meaning unless the context in which they are used clearly requires a different meaning. Words in the singular number include the plural, and in the plural include the singular. Additionally, words of the masculine gender include the feminine and the neuter; and, when the tense so indicates, words of the neuter gender may refer to any gender.

VIII. Conditions of Submission

- All proposing Consultants shall comply with all conditions, requirements, and specifications contained herein. Any departure constitutes sufficient cause for rejection of the proposal.
- A duly authorized official of the proposing Consultant must sign the submitted proposal.
- No proposal will be accepted from any person, Consultant, or corporation that is in arrears upon any obligation to the City or that otherwise may be deemed irresponsible or unresponsive by the City staff or City Council.
- Only one proposal will be accepted from any one person, Consultant, or corporation.
- All prices quoted must be firm for a period of 90 days following the opening of the proposal.
- The City reserves the right to undertake its own investigation to evaluate a firm.
- The City hereby specifically reserves the right to reject all proposals or to reject any part of any proposal submitted. In addition, the right is reserved to waive any formalities or informalities contained in said proposal, and to award the proposal to the most responsive and responsible Consultant as deemed in the best interest of the City.
- The proposing Consultant shall bear all costs, including travel and expenses, incurred in the preparation, delivery, and presentation of this proposal, and including contract negotiations or for any work performed prior to the effective date of a contract.
- The proposing Consultant shall include as a part of the proposal, the completed Disclosure Statement attached to this RFP as Attachment 1, regarding any potential or existing conflict of interest.
- The successful Consultant shall not, at any time, permit any individual employed by the City to benefit because of the financial interest in the proposing Consultant, any affiliate of the successful Consultant, or its subcontractors.
- All proposals become the property of the City upon receipt and will not be returned to the proposing Consultant. Selection or rejection of the proposal will not affect this right.

IX. Evaluation of Proposals

The City Manager/Director of Community Development, Directors that comprise the City's management staff, the Planning Manager/Floodplain Administrator, and Planning and Building Permit Technician will evaluate all proposals. Proposals will be evaluated on the basis of the evaluation criteria noted herein. The City reserves the right to make an award based directly on the proposals or to negotiate further with one or more Consultants, all in its sole discretion. The City also reserves the right to personally interview any Consultant that submits a proposal. The selected Consultant will be chosen on the basis of the apparent greatest benefit to the City, and not necessarily on the basis of the lowest price. The City Council shall make the final determination of the Consultant selected.

X. Evaluation Criteria

Proposals shall be evaluated on the basis of the following criteria (not in any order):

- The ability to perform the scope of services.
- The fee structure based on the services to be provided.
- Responsiveness and availability to proactively discuss engineering requirements with applicants and City staff and to meet with applicants and City staff, when necessary, to discuss submitted plans, relevant comments, and to visit sites in a timely manner.
- The ability to meet review deadlines.
- Results of reference checks and past performance for other clients.
- The experience in supporting municipal governments of similar size, scope, and nature.
- The Consultant's proposed team including the experience and resumes of key personnel.
- The Consultant has an in-person presence in the Denver metro area.
- The ability to provide review services electronically.
- The Consultant's team and their combination of experience, education, and certifications.
- The degree to which the proposal meets or exceeds the terms of the RFP.

XI. General Requirements of the Successful Firm

- The successful Consultant shall be expected to enter into a contract by and between the City (as party of the first part) and the proposing Consultant (as party to the second part) upon terms negotiated between the parties, which may include terms of the proposal, as accepted. The City's form of professional services agreement is attached to this RFP as Attachment 2.
- The successful Consultant shall be prohibited from assigning or subcontracting the whole or any part of the contract or submitting a proposal on a joint basis without the prior written consent of the City.
- The successful Consultant will agree not to refuse to hire, discharge, promote, demote, or to otherwise discriminate in employment of any person otherwise qualified solely because of race, religion, sex, national origin, color, disability, or any other legally protected class.
- The successful Consultant will be required to maintain errors and omissions insurance with the limits of liability of at least One Million Dollars (\$1,000,000), as well as a comprehensive general liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for the duration of the contract period and provide proof thereof to the City on an annual basis.
- The selected Consultant must also carry non-owned or hired non-own auto automobile liability insurance as well as liability coverage for owned vehicles, bodily injury and damages of One Million Dollars (\$1,000,000) per occurrence or as required by law, whichever is greater.
- The selected Consultant shall be required to obtain and maintain cyber liability insurance in accordance with the terms of the professional services agreement attached hereto.
- The successful Consultant and its employees will operate as an independent contractor and will not be considered employees of the City. The City shall be neither liable or obligated to pay the successful Consultant or its employees' sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment.
- The successful Consultant may perform professional services during the term of the contract with the City for other parties; provided, however, that such performance of other services shall not conflict with or interfere with its ability to perform the requested services for the City.
- Unless otherwise noted or negotiated, the City will remit payment 30 days after receipt of the invoice and otherwise in accordance with the terms of the professional services agreement.
- The successful firm will need to adhere to the security requirements of the Cherry Hills Police Department building access including finger printing and background check through CCIC.

XII. Proposal Elements and Format

Proposals submitted shall contain all information as requested herein and any additional information necessary to summarize the overall benefit of the proposal to the City.

Five (5) copies of the proposal shall be submitted. Submittal of a proposal shall be taken as *prima facie* evidence that the proposing Consultant has full knowledge of the scope, nature, quality, and quantity of the work to be performed, and the detailed requirements and conditions under which the work is to be performed.

Proposals shall include the following:

- A cover letter shall be provided stating the name, address, telephone number, and an email address of the proposing Consultant including the signature of the person having the authority to make the proposal for the Consultant.
 - State whether the Consultant is local, regional, or national and the location of the office to service the contract.
 - Name, title, email address, telephone number of the person(s) to contact and who are authorized to represent the Consultant and to whom the correspondence should be directed.
 - Give the Federal and State taxpayer identification numbers of the Consultant.
 - A letter must be signed by a corporate officer or person authorized to bind the Consultant to the proposal and fee schedule.
- A statement of your understanding of the services to be performed and a commitment to provide services as specified. An “acceptance of conditions” statement which affirms the acceptance of all conditions and requirements contained in this RFP.
 - Attached signed Disclosure Statement (Attachment 1).
 - A response to the “Scope of Services” section of this RFP.
 - Attached “Scope of Services Cost Tables” (Attachment 2).
- Give the name(s) of the person(s) who will be authorized to make representations for the Consultant, their title(s), address, telephone number(s), and email address(es). In addition, please identify each individual to be assigned to the project team, including the identification of the City Engineer and the primary point of contact for day-to-day functions (primarily building permit review) and their resume(s). Please include seminars, courses, training programs, etc. attended within the past three years, and any relevant certifications.
 - A list of what portions of the work, if any, that will be subcontracted.
 - The core function of the Consultant will be to provide services related to grading, drainage, floodplain, and traffic engineering matters. The ability to provide other services such as, but not limited to, bridge and roadway design, parking study analysis, and surveying are desired.
 - Name the key personnel who will be providing the day-to-day services with their experience and expertise. A Certified Floodplain Manager must be included with this information.
 - Describe all software and the process by which plan review will be conducted electronically.
 - Describe the range of activities performed by the local office for plan review, and day-to-day communications.
 - Give the number of partners, managers, supervisors, seniors, and other professional staff employed in the local office.
 - Describe the Consultant’s policy for notification to the City for personnel changes to the Consultant’s team and how services will be provided to ensure plan review obligations are met.
 - Description of the approach the Consultant will take in providing the services requested.

- Description of how the Consultant is positioned to provide services. Include a history of experience providing similar services.
- Describe any quality control procedures.
- A list of at least five references (preferably existing clients in the public sector) for which similar services are being provided by each of the supervisory staff members who would be assigned to the contract. Include contact names, addresses, telephone numbers, and email addresses for the referral.
 - Provide a list of the local office's current and prior government/public sector clients indicating the type(s) of services performed and years served for each. Include the number of users and length of service with the client.
- Any other information deemed necessary by the proposing Consultant.
- Acknowledgement of any posted Addendums to the original RFP, if applicable, and acknowledgement that Consultant has reviewed the attached form of professional services agreement.
- A statement indicating that the proposal and cost schedule will be valid and binding for 90 days following the proposal due date and will become part of the contract negotiated with the City.
- Provide a company profile to include; length of time in business, number of clients, number of employees, and area of expertise focused on customer services, plan review, and performing inspections.
- Identify and describe the nature of any professional or regulatory disciplinary actions or legal actions related to the company or employees of the company during the past three years.

Note: The City reserves the right to reject any replacements to the initially proposed Consultant team.

XIII. Scope of Services

The City wishes to enter into a contract with a Consultant to perform Civil Engineering Services for a period of one year with up to four (4) annual renewals, subject to City Council approval. The terms of the contract shall be negotiated between the parties. All services shall be performed in accordance with generally accepted Civil Engineering Services. The successful Consultant shall have significant experience in providing Civil Engineering Services for a governmental agency.

It is critical that the City's Civil Engineering Services operate with minimal delays or interruptions. The selected Consultant shall perform the services listed below.

- **Building Permit/Plan Review**
 - Provide for the review of building permits for compliance with engineering standards within a ten (10) business day review cycle. When necessary, provide detailed written comments identifying necessary corrections.
 - Maintain accurate records of all permits that are reviewed and/or approved.
 - Maintain accurate records of time spent reviewing each permit.
 - Accommodate electronic submittals and review of permits.
 - Having a Certified Floodplain Manager as a member of the applicant's team is required.
- **City Staff Support**
 - Coordinate with staff to ensure the efficient processing of permits.
 - Available for questions and to provide answers to staff in a reasonable timeframe.
 - Proactively communicate with staff on upcoming deadlines and permit status.
 - Operate as the City Engineer who reports to the City Manager/Community Development Director.
 - Attend meetings, including a yearly meeting with contractors, engineers, architects, and other design professionals as requested by staff.
 - Flexibility to "rush" certain permits as requested by staff.
 - Attend City Council, Board of Adjustment and Appeals, and Planning and Zoning Commission meetings as requested by staff.
 - Project review and design for City projects, when needed.
- **Customer Service**
 - Provide detailed written comments or approval within the City's ten (10) business day review cycle.
 - Available for questions and to provide answers to the general public, contractors, or other professionals in a reasonable timeframe.
 - Proactively communicate with the general public, contractors, and other professionals regarding permit status and upcoming deadlines.
 - Flexibility to "rush" certain permits as requested by staff.
- **Civil Engineering Code Updates**
 - Work with staff, the public, contractors, other professionals, and elected and appointed officials to educate them on the different codes.
 - Work with staff, the public, contractors, other professionals, and elected and appointed officials to educate them on changes to the applicable codes.
 - Work with staff to update the codes as directed by staff.

- Monitor and assist with identifying areas for improvement to the City's building permit and land use application processes. This includes the creation of handouts for the general public, contractors, and other professionals to use throughout the processes.
- Assist the City in complying with Colorado Open Records Act (CORA) requests.
- Assist the City in the yearly audit and five year detailed audit for Community Rating System (CRS) compliance with the Federal Emergency Management Agency (FEMA).
- Provide an invoice once a month that shows the total amount due, all the activity performed, by whom each activity was performed, the time spent on the activity by each individual, and the hourly rate for each individual performing the activity.
- Provide additional consulting services agreed upon between the City Manager/Director of Community Development and the selected Consultant.

The City will:

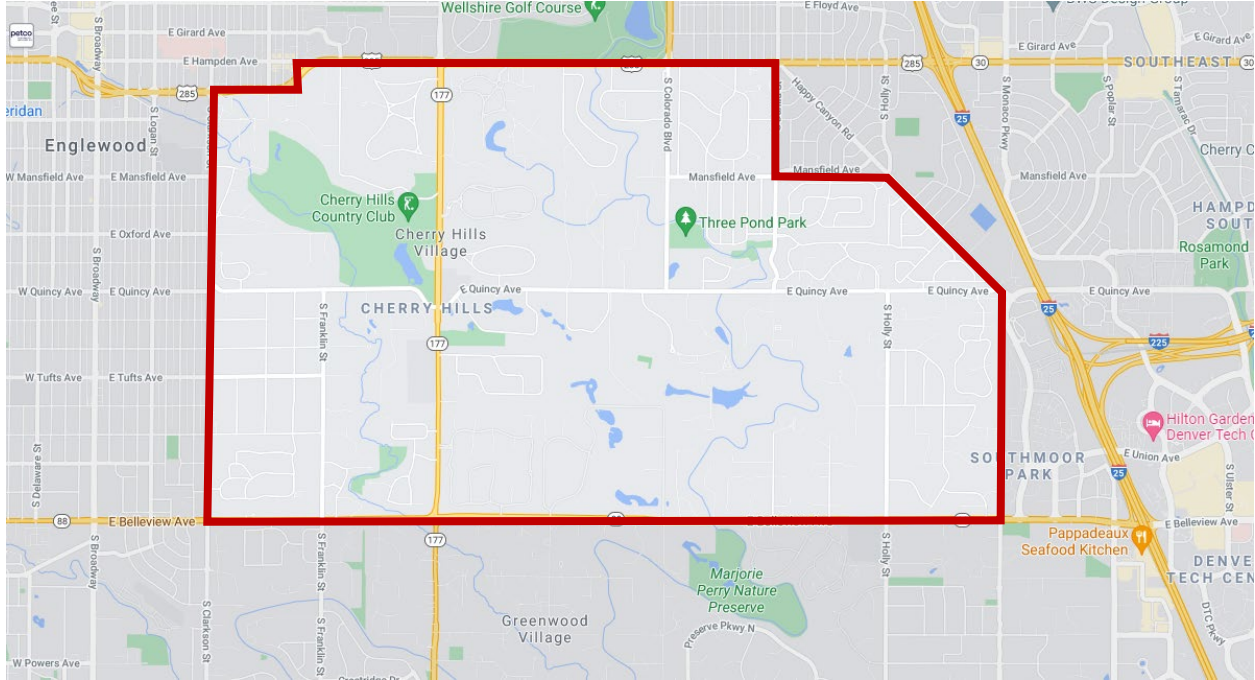
- Provide adequate space for the selected Consultant to conduct in-person functions on site.
- Administer the submittal and issuance of all building permits and land use applications and answer questions related to these activities.
- Coordinate, schedule, and retain inspection results.

XIV. Schedule and Fees

The proposal shall include, in addition to the cost of information requested in Scope of Services, the proposed hourly rates and overtime rates as specified in the Scope of Services, including the rates for project review and design for City projects for the City for each of the next five (5) calendar years. Proposal fees shall include the cost of all other incidental expenses to this engagement.

INFORMATION ABOUT CHERRY HILLS VILLAGE

Cherry Hills Village shares its northern and eastern border with Denver, its western border with Englewood, and its southern border with Greenwood Village.



Cherry Hills Village is approximately six and one-half square miles comprised mostly of single-family detached homes, country clubs, schools, and places of assembly. The City’s population is about 6,400. The City has an elected Mayor and a six-member City Council. The City Council appoints the City Manager, who currently, is also the Community Development Director.

The City provides services in the following areas: public safety, public works, community development, municipal court, general government, parks and recreation, and water and sewer. The total annual budget for the City is approximately \$12.5 million.

Building Permit Activity:

| Permit Type | 2020 | 2021 | 2022 – through April |
|--|-------------|-------------|----------------------|
| Total Permits | 806 | 871 | 233 |
| New Homes | 14 | 13 | 5 |
| Additions/Remodels/Alterations | 113 | 137 | 33 |
| Accessory/Recreational | 59 | 75 | 13 |
| Other (i.e. Fence/Electrical/Plumbing/Mechanical) | 620 | 646 | 103 |
| Permit Fees Collected | \$1,044,597 | \$1,583,931 | \$372,974 |

ATTACHMENT 1

DISCLOSURE STATEMENT

As a condition for consideration vendor must disclose any conflict of interest with the City of Cherry Hills Village, including, but not limited to, any relationship with any City of Cherry Hills Village elected official or employee. Your response must disclose if a known relationship exists between any principal of your firm and any City of Cherry Hills Village elected official or employee. If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose a conflict may result in disqualification. This form must be completed and returned in order for your proposal to be eligible for consideration.

NO KNOWN RELATIONSHIP EXISTS

RELATIONSHIP EXISTS (Please explain the relationship)

I CERTIFY THAT:

1. I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein is accurate and true as of the date; and
2. My organization shall comply with all state and federal equal opportunity and non-discrimination requirements and conditions of employment.

Print Name

Title

Signature

ATTACHMENT 2

SCOPE OF SERVICES COST

Hourly Rates:

| Service Provided | Role/Title | Hourly Rate |
|------------------|------------|-------------|
| | | \$ |
| | | \$ |
| | | \$ |

Other Expenses:

| Item | Cost |
|---|------|
| (List any other special expenses with their cost) | \$ |

ATTACHMENT 3

FORM OF PROFESSIONAL SERVICES AGREEMENT

**City of Cherry Hills Village, Colorado
AGREEMENT FOR PROFESSIONAL SERVICES**

Project/Services Name: _____

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into by and between the City of Cherry Hills Village, a home rule municipality of the State of Colorado, with offices at 2450 E. Quincy Avenue, Cherry Hills Village, Colorado 80113 (the “City”), and _____, a _____ with offices at _____ (“Contractor”) (each individually a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the City requires certain professional services as more fully described in **Exhibit A**; and

WHEREAS, Contractor represents that it has the requisite expertise and experience to perform the professional services; and

WHEREAS, the City desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Services. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Services” or “Scope of Services”). The Parties recognize and acknowledge that, although the City has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the City, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

B. Changes to Services. A change in the Scope of Services shall not be effective unless authorized through a written amendment to this Agreement signed by both Parties. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein or as otherwise provided in writing by the City, no agent, employee, or representative of the City is authorized to modify any term of this Agreement.

C. Duty to Inform. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

D. Time of Performance. The Contractor shall perform all Services in accordance with this Agreement commencing on the Effective Date, as set forth in Section II of this Agreement, until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services.

II. TERM AND TERMINATION

A. Term. This Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until [REDACTED] or until terminated as provided herein ("Termination Date"). The Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation.

B. City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

1. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after Contractor's receipt of a notice of termination; and

2. The Contractor shall deliver all finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement to the City and such documents, data, studies, and reports shall become the property of the City; and

3. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section II.B of this Agreement. The Contractor shall deliver such final accounting and final invoice to the City within thirty (30) days of the date of termination; thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section II.C, "reasonable time" shall not be less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Agreement. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the Termination Date contained in the written notice. Thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. Provided that notice of non-performance is provided in accordance with this

Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

D. Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon Contractor's receipt of such notice of suspension from the City, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement. Contractor shall not re-commence performance of the Services until it receives written notice of re-commencement from the City.

E. Delivery of Notices. Any notice permitted by this Section II and its subsections shall be addressed to the City Representative or the Contractor Representative at the address set forth in Section XI.D of this Agreement or such other address as either Party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

III. REPRESENTATIVES AND SUPERVISION

A. City Representative. The City representative responsible for oversight of this Agreement and the Contractor's performance of Services hereunder shall be the City Manager or his or her designee ("City Representative"). The City Representative shall act as the City's primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Agreement shall be [insert name and title] ("Contractor Representative"). The Contractor Representative shall act as the Contractor's primary point of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. City Supervision. The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform with little or no daily supervision which results in the City's need to allocate resources in time or expense for daily supervision shall constitute a material breach of this Agreement and be subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement.

IV. COMPENSATION

A. Not-to-Exceed Amount. Following execution of this Agreement by the Parties, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section IV and its subsections. Compensation to be paid hereunder shall not exceed [Written Not to Exceed Amount] (\$ [redacted]) ("Not-to-Exceed Amount") unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement. Notwithstanding the amount specified in this Section, Contractor shall be paid only for work performed. Contractor shall not be paid until tasks identified in the Scope of Services are performed to the satisfaction of the City. In consideration for the completion of the Scope of Services by Contractor, the City shall pay Contractor as follows:

- If this box is checked, the Contractor shall invoice the City for Services performed and the City shall pay Contractor based on the rates or compensation methodology described in **Exhibit B**. This amount shall include all fees, costs, and expenses incurred by Contractor, and no additional amounts shall be paid by the City for such fees, costs, and expenses. Contractor may request final payment upon completion and the City's acceptance of all work or Services as set forth in **Exhibit A**.
- If this box is checked, the City shall pay the Contractor the Not-to-Exceed Amount in a single lump sum payment on [insert date here, if applicable].

B. Receipts. The City, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the City's interest. The City, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

C. Reimbursable Expenses.

1. If this Agreement is for lump-sum compensation, there shall be no reimbursable expenses.
2. If the Agreement is not for lump-sum compensation, the following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the City without administrative mark-up, which must be accounted for by the Contractor, and proof of payment shall be provided by the Contractor with the Contractor's invoices:

- None
- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax-deductible business expense)
- Printing and Photocopying Related to the Services (billed at actual cost)
- Long Distance Telephone Charges Related to the Services
- Postage and Delivery Services
- Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

3. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

D. No Waiver. The City's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

V. PROFESSIONAL RESPONSIBILITY

A. General. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing required by law.

B. Standard of Performance. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules, and regulations.

C. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.

VI. INDEPENDENT CONTRACTOR

A. General. Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a City employee for any purposes.

B. Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

C. Insurance Coverage and Employment Benefits. The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation,

medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

D. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

VII. INSURANCE

A. General. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); OR
- The Contractor shall secure and maintain the following ("Required Insurance"):
 - Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.
 - Comprehensive General Liability insurance with minimum combined single limits of _____ Dollars (\$_____) each occurrence and of _____ Dollars (\$_____) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an

“occurrence” basis as opposed to a “claims made” basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

- Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than _____ Dollars (\$____.____) each occurrence with respect to each of the Contractor’s owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

- Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of _____ Dollars (\$____.____) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. Additional Requirements. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the City, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Insurance Certificates. Contractor shall provide to the City a certificate of insurance as evidence that the required policies are in full force and effect prior to the commencement of the Services. The certificate shall identify this the Project/Services Name as set forth on the first page of this Agreement.

D. Failure to Obtain or Maintain Insurance. The Contractor’s failure to obtain and continuously maintain policies of insurance shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All monies so paid by the City, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the City immediately upon demand by the

City. At the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the City may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. REMEDIES

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities, or inactions by the Contractor. The remedial actions include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
4. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

X. RECORDS AND OWNERSHIP

A. Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act (“CORA”), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the City’s records retention and disposal policies. Those records which constitute “public records” under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor’s willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor’s right to defend against disclosure of records alleged to be public.

B. City’s Right of Inspection. The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Agreement.

C. Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Cherry Hills Village upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology, and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

D. Return of Records to City. At the City’s request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City.

XI. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Arapahoe County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

If to the City:

If to Contractor:

| | |
|---|---|
| <p>City of Cherry Hills Village Attn: City Manager 2450 E. Quincy Avenue Cherry Hills Village, Colorado 80113</p> | <p>Contractor's Name Attn: [Contractor Representative] [Contractor's Mailing Address]</p> |
| <p>With Copy to: Cherry Hills Village City Attorney Michow Cox & McAskin LLP 6530 S. Yosemite Street, Suite 200 Greenwood Village, Colorado 80111</p> | <p>With Copy to:</p> |

E. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

G. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

H. Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their 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.

I. Governmental Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (“CGIA”), or otherwise available to the City and its officers or employees. Presently, the monetary limitations of the CGIA are set at three hundred eighty-seven thousand dollars (\$387,000) per person and one million ninety-three thousand dollars (\$1,093,000) per occurrence for an injury to two or more persons in any single occurrence where no one person may recover more than the per person limit described above.

J. Rights and Remedies. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XI shall not authorize assignment.

M. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

N. Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

O. Attorneys' Fees. If the Contractor breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

P. Survival. The provisions of Sections VI (Independent Contractor), VII (Insurance), VIII (Indemnification) and XI (A) (Governing Law and Venue), (J) (Rights and Remedies), (K) (Annual Appropriation), (N) (Release of Information) (O) (Attorneys' Fees), and (Q) Agreement Controls shall survive the expiration or termination of this Agreement. Any additional terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

Q. Agreement Controls. In the event a conflict exists between this Agreement and any term

in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

R. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure.” As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

S. Protection of Personal Identifying Information. In the event the Services include or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, *et seq.*, relating to third-party services providers.

T. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Cherry Hills Village and the Contractor and bind their respective entities.

U. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

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SIGNATURE PAGES FOLLOW

THIS AGREEMENT is executed and made effective as provided above.

**CITY OF CHERRY HILLS VILLAGE,
COLORADO**

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

ATTEST:

Laura Gillespie, City Clerk

APPROVED AS TO FORM (*excluding exhibits*):

Kathie Guckenberger, City Attorney

CONTRACTOR:

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing Agreement for Professional Services was subscribed, sworn to and acknowledged before me this ____ day of _____, 20__, by _____ as _____ of _____, a _____.

My commission expires: _____

(S E A L)

Notary Public

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION