

## City of Fruita

# Design and Construction Management Services - Community Center Pickleball Court Installation Request for Proposals

### Introduction & General Background

The City of Fruita (“the City”) is requesting proposals from qualified contractors to convert the existing Orr / Raptor Skate Park located at the Fruita Community Center, 324 Coulson Street, Fruita, CO 81521 (the “Community Center”), into a four-court pickleball complex. All proposals shall be submitted and received no later than 3:00 p.m. (MDT) on Thursday, August 8, 2024 (the “Submission Deadline”). Each qualified contractor submitting a proposal pursuant to this Request for Proposals (“RFP”) is hereafter referred to as an “Offeror” and all such qualified contractors are collectively hereafter referred to as “Offerors.” Proposals submitted by Offerors pursuant to this RFP are hereafter referred to as “Proposals” and each is referred to as a “Proposal.”

Electronic Proposals will be accepted through bidnet direct’s Rocky Mountain E-Purchasing System (“RMEPS”), accessible at <https://www.bidnetdirect.com/colorado>. (City does not have access to or control over the vendor side of RMEPS, and City makes no representation or warranty concerning the operability or accessibility of RMEPS. If website accessibility, operability, or other problems with RMEPS arise during Proposal submission, Offerors MUST contact bidnet direct to resolve the issue prior to the Submission Deadline. The Submission Deadline will not be changed or extended due to any issues or problems with Proposal submission, whether caused by RMEPS or otherwise. Should any such issues or problems arise, contact bidnet direct at 800-835-4603.) Proposals may also be emailed directly to MacKenzie Erickson, City Procurement and Contracts Specialist, at [merickson@fruita.org](mailto:merickson@fruita.org).

### Compliance

All Offerors agree and shall agree to comply with all conditions, requirements, and instructions of this RFP as stated herein or otherwise implied hereby. Should City omit anything from this RFP that is necessary to the clear understanding of the scope of services, deliverables, or requirements set out herein, or should it appear that various instructions in this RFP are in conflict, an Offeror must secure instructions or clarifications from the City’s Purchasing Division prior to the Submission Deadline. City’s Purchasing Division may be contacted at: MacKenzie Erickson, City Procurement and Contracts Specialist, [merickson@fruita.org](mailto:merickson@fruita.org). In no circumstance will the Submission Deadline be changed or extended due to omissions or conflicts herein.

### Proposal Ownership

All Proposals submitted pursuant to this RFP become the property of City upon receipt, and a Proposal shall only be returned to an Offeror at City’s option. Selection or rejection of a Proposal shall not affect this right. City shall also have the right to use or appropriate all ideas or adaptations of ideas contained in any Proposal, subject only to the limitations outlined in Section 21 hereto (titled “Confidential and Proprietary Information”). Disqualification or rejection of a Proposal does not eliminate City’s right of ownership therein.

### **Minimal Standards for Responsible Prospective Offerors**

In submitting a Proposal, an Offeror must be able to demonstrate its ability to responsibly perform and comply with the scope of services, deliverables, requirements, and obligations set out in this RFP.

Accordingly, in submitting a Proposal, an Offeror must demonstrate or establish that such Offeror:

- Has adequate financial resources, or the ability to obtain such financial resources, as necessary to responsibly perform the Project (defined below) or otherwise comply with the scope of services, deliverables, requirements, and obligations set out herein.
- Is able to comply with the required or proposed completion schedule of the Project (defined below).
- Has a record of performance that is satisfactory to City.
- Has a record of integrity and ethics that is satisfactory to City.
- Is otherwise qualified and eligible to have its Proposal be selected by City and enter into a contract with City for the construction and completion of the Project (defined below).

### **Nonconforming Terms and Conditions**

A Proposal that includes terms and conditions that do not conform to all the terms and conditions, or any of them, required by or included in this RFP is subject to rejection by City as being non-responsive. City reserves the right to permit an Offeror to withdraw nonconforming terms and conditions from its Proposal prior to a determination by City of Proposal non-responsiveness based on the inclusion or submission of terms and conditions that are nonconforming with this RFP. Alternatively, in the event City rejects a Proposal for being non-responsive to this RFP, City may elect, in its sole discretion, to allow the Offeror of such rejected Proposal to submit a new Proposal that conforms to and satisfies all the terms and conditions required by and included in this RFP.

### **Open Records**

All Offerors acknowledge and agree that all Proposals, and any of them, shall be open for public review and inspection after a Proposal is selected by City and a contract for the completion of the Project (defined below) is entered. Trade secrets and confidential information contained in a Proposal and so identified by the Offeror that submitted such Proposal shall be treated as confidential by the City to the extent allowed under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 – 24-72-206.

### **Sales Tax**

Under relevant law, City is generally exempt from the Colorado sales tax and the federal excise tax; therefore, all fees included or defined in, or otherwise related to, this RFP or the Project (defined below) do not and shall not include or reflect taxes.

### **Questions and Addenda**

**Questions about this RFP or the Project will be accepted until Thursday, July 25, 2024, at 5:00 p.m. (MDT).**

**Addenda to the RFP, if any, will be issued by Monday, July 29, 2024, by 5:00 p.m. (MDT).**

Direct RFP questions to:

MacKenzie Erickson  
[merickson@fruita.org](mailto:merickson@fruita.org)

All questions, inquiries, comments, or communications pertaining to this RFP or any Proposal (whether regarding the Proposal preparation or submission process, Project (defined below) specifications or scope, or otherwise) must be directed (in writing) to [merickson@fruita.org](mailto:merickson@fruita.org). Communicating directly with City's Project Manager (defined below) or engineers for the Project (defined below) is not appropriate during the public procurement and Proposal submission or review process, and doing so may result in disqualification of an Offeror or rejection of a Proposal.

Any interpretations, corrections, or changes to this RFP, or extensions of or changes to the Submission Deadline, shall be made by way of written addenda to the RFP drafted and adopted by City. Sole authority to authorize such addenda shall be vested in City's Purchasing Representative. Addenda to the RFP will be issued electronically through RMEPS (accessible at [www.bidnetdirect.com/colorado](http://www.bidnetdirect.com/colorado)) and on City's website (accessible at [Fruita.org](http://Fruita.org)). **An Offeror must acknowledge receipt of all addenda to this RFP in its Proposal.**

**A mandatory, pre-Proposal submission review and walkthrough of the Community Center and Project (defined below) area will be conducted by City and held for prospective Offerors on Thursday, July 18, 2024, at 1:00 p.m. (MDT). The Community Center is located at 324 N. Coulson Street, Fruita, Colorado 81521. Offerors acknowledge and understand the obligation to attend such walkthrough before submitting a Proposal.**

### **City Oversight**

City's Parks and Recreation Director will be responsible for management of the Project on behalf of City (the "Project Manager"). City will provide reasonable assistance to the Offeror of the accepted Proposal in the scheduling of meetings, interpreting City's policy and procedural requirements that relate to or affect the Project (defined below), researching City's internal documents, and coordinating with outside agencies and City staff; provided, however City's foregoing commitments do not and will not limit Offeror's requirements or obligations to timely complete the Project (defined below) or to complete and render the services and requirements set forth in this RFP and in all agreements between City and such Offeror regarding the Project. City will rely on the personnel, experience, and expertise of the Offeror of the accepted Proposal to ensure all necessary components of the Project (defined below) and the scope of services and requirements set forth in this RFP and in all agreements between City and such Offeror related to the Project are completed.

### **Scope of Services/Deliverables**

All Proposals should be for the design and construction of a four (4) pickleball courts upon an existing concrete slab in the Orr / Raptor Skate Park adjacent to the Community Center. Such pickleball courts should face north and south. Such design and construction will include all site preparation, pickleball court construction, fencing construction, additional concrete work as required or requested by City, irrigation repair and reconfiguration, and equipment installation (the foregoing, as further described below and elsewhere in this RFP, is referred to herein as the "Project"). Construction of the Project should begin in August, 2024 and be completed by the end of September, 2024.

In submitting a Proposal pursuant to this Request for Proposal (RFP), an Offeror must include two distinct options in the scope of work portion of such Proposal. This approach ensures City can select the Proposal that best aligns with City's goals, budget, and timeline for the Project (defined below). Each option included in a Proposal must be described in detail and highlight the unique approach, methodology, and key components of and for such option. The specifications for both options are outlined below, and City requires that Proposals include comprehensive deliverables, timelines, and budget estimates for each option. This dual-option framework allows City to compare different strategies and make an informed decision based on the specific needs of the Project.

All drawings, plans, and specifications referenced or included in, provided with, or attached to this RFP are for general reference and review purposes only. City disclaims any representations or warranties that such drawings, plans, and specifications, or any of them, are correct, exact, or fully accurate depictions of the Community Center, the Project or Project area, or otherwise. It is the responsibility of an Offeror to verify all dimensions, measurements, and site conditions of the Community Center and Project area as part of the preparation and submission of its Proposal.

Professional services for the Project will include, but are not limited to, the following tasks:

Option 1:

**Phase 1: Project Site Preparation**

Offeror shall remove the three (3) horizontal panels from the north and south sides of the existing fence around the concrete slab of the Orr / Raptor Skate Park at the Community Center and leave such fencing onsite for use by the Community Center. Offeror shall remove all skate park items for disposal with the exception of the half-pipe, which will be removed to the Public Works Department located at 900 Kiefer Avenue, Fruita, CO 81521. As part of this Phase 1, Offeror must also perform irrigation repair and reconfiguration work as necessary or required by City because the concrete slab area must be expanded for installation of the pickleball courts discussed more below.

**Phase 2: Concrete Foundation**

Overall dimensions of the pickleball court complex to be constructed as part of the Project must be sixty-three feet (63') in width and one hundred twenty feet (120') in length, with a total area of approximately seven thousand three hundred twenty square feet (7,320 sq. ft.). The four (4) pickleball courts built therein will be laid out and oriented as shown in Exhibit A. Additional concrete will need to be poured and tied into the existing concrete slab in the Project area to prevent movement in the concrete on which the pickleball courts will be built. Additionally, a retaining wall or concrete wall must be installed seventy feet (70') south of the existing sidewalk in the Project area and north of the new concrete to be poured and tied into the existing concrete slab.

**Phase 3: Surfacing, Fencing, Benches, and Nets**

Offeror must surface and stripe the four (4) new pickleball courts to be constructed as part of the Project. Playing lines for the pickleball courts must meet the tolerances specified in the 2020 American Sports Builders Association Construction Manual. The surfacing for the pickleball courts will be SnapSports PickleGrip surfacing or equivalent. The pickleball courts will be bright blue, with sky blue kitchens and green non-playing surface areas. All new fencing installed for the Project must be black and vinyl coated. The north and south fencing installed for the Project shall be eight feet (8') in height and include black wind screens. All other fencing installed for the Project shall be four feet (4') in height. Offeror must install

gates in the new fencing for the Project on the west side and south side of the pickleball courts as further shown in Exhibit A. Additionally, Offeror must install a fence four feet (4') in height between the north and south pickleball courts constructed as part of the Project, as well as six (6) black, perforated steel benches that are eight feet (8') long along and adjacent to the new, four foot (4') fence located on the west side of the pickleball courts. Such new benches will be from WillyGoat or an equivalent vendor. The proposed layout of the foregoing Option 1 surfacing, fencing, and bench and net installation can be found in Exhibit A.

## Option 2:

### **Phase 1: Site Preparation**

Offeror shall remove the three (3) horizontal panels from the north and south sides of the existing fence around the concrete slab of the Orr / Raptor Skate Park at the Community Center and leave such fencing onsite for use by the Community Center. Offeror shall remove all skate park items for disposal with the exception of the half-pipe, which will be removed to the Public Works Department located at 900 Kiefer Avenue, Fruita, CO 81521. As part of this Phase 1, Offeror must also perform irrigation repair and reconfiguration work as necessary or required by City because the concrete slab area must be expanded for installation of the pickleball courts discussed more below.

### **Phase 2: Concrete Foundation**

Overall dimensions of the pickleball court complex to be constructed as part of the Project must be seventy feet (70') in width and one hundred and twenty feet (120') in length, with a total area of approximately eight thousand four hundred square feet (8,400 sq. ft.). The four (4) pickleball courts built therein will be laid out and oriented as shown in Exhibit B. Additional concrete will need to be poured and tied into the existing concrete slab in the Project area to prevent movement in the concrete on which the pickleball courts will be built. Additionally, a retaining wall or concrete wall must be installed seventy feet (70') south of the existing sidewalk in the Project area and north of the new concrete to be poured and tied into the existing concrete slab.

### **Phase 3: Surfacing, Fencing, Benches, Shade Structures, and Nets**

Offeror must surface and stripe the four (4) new pickleball courts to be constructed as part of the Project. Playing lines for the pickleball courts must meet the tolerances specified in the 2020 American Sports Builders Association Construction Manual. The surfacing for the pickleball courts will be SnapSports PickleGrip surfacing or equivalent. The pickleball courts will be bright blue, with sky blue kitchens and green non-playing surface areas. All new fencing installed for the Project must be black and vinyl coated. The north and south fencing installed for the Project shall be eight feet (8') in height and include black wind screens. All other fencing installed for the Project shall be four feet (4') in height. Offeror must install gates in the new fencing for the Project on the west side and south side of the pickleball courts as further shown in Exhibit B. Additionally, Offeror must install a fence four feet (4') in height between the east and west pickleball courts as well as between the north and south pickleball courts as shown in Exhibit B. Offeror must also install six (6) black, perforated steel benches that are eight feet (8') long along the new, four foot (4') fence located on the west side of the courts, such benches to be configured in two (2) sets of three (3). Such new benches will be from WillyGoat or an equivalent vendor. Two (2) cantilevered shade structures must be installed to cover each new set of three (3) benches. The dimensions of such cantilevered shades shall be approximately ten feet (10') in length, twenty feet (20') in width, and eight feet (8') in height, and such shades shall be installed to cover each set of three (3) benches as shown in Exhibit B. Such cantilevered shades will be from WillyGoat or an equivalent vendor. The proposed layout of

the foregoing Option 2 surfacing, fencing, and bench, shade structure, and net installation can be found in Exhibit B.

### **Required Submittals and Proposal**

Interested Offerors shall submit Proposals that clearly demonstrate their ability to complete the Project and provide services outlined herein. Proposals must be organized in the order listed below to facilitate fair and equitable evaluation. An electronic copy of a Proposal shall be submitted and include:

- i. **Cover Letter** – A letter of interest expressing Offeror’s interest in the Project. Include in such letter of interest a statement regarding Offeror’s time and ability to commit key personnel to the Project during the period of Project construction and installation. The letter of interest should also include the name, address, and phone number of the person who will be authorized to make a presentation to City concerning the Proposal on behalf of Offeror.
- ii. **Company Qualifications, Relevant Project Experience & References** – A summary of previous work completed by Offeror and similar to the Project. Such summary should include at least three (3) specific examples of relevant project experience in Colorado. The summary should also include the dates of completion of such prior, similar projects and the deliverables achieved for such prior projects. In addition to a summary, include a list with a minimum of three (3) references including email addresses, phone numbers, and physical addresses for all such references.
- iii. **Staff Team and Organization** – A brief overview of Offeror’s key personnel who will be devoted to work on the Project. Include respective job titles, timelines of employment with Offeror, and experience with projects similar to the Project.
- iv. **Scope of Services & Deliverables** – A proposed scope of services and deliverables for the Project as defined and described in this RFP. Include an estimated timeline for completion of the Project.
- v. **Cost of Services** – An itemized list of costs for the work, requirements, and obligations listed or contemplated in the Scope of Services/Deliverables section of this RFP.
- vi. **Solicitation Response Form** – A completed and signed copy of the Solicitation Response Form found at the end of this RFP.
- vii. **Bid Bond** – If an Offeror expects the Project Contract (defined below) will exceed FIFTY THOUSAND DOLLARS (\$50,000) in value, Offeror shall include with its Proposal a bid bond or other form of guarantee equal to five percent (5%) of the Project’s base bid as listed in the Proposal’s Cost of Services. The bid bonds or other guarantees of the three (3) Offerors with the lowest Project base bids, or with the most responsive Proposals, as determined and selected by City in its sole discretion, shall be retained by City until Contractor (defined below) executes the full Project Contract and furnishes the performance bond or other form of performance security required under the Project Contract, but in no event shall City retain such bid bonds or other guarantees longer than forty-five (45) days after receipt thereof. The bid bonds or other guarantees of all other Offerors, if any, shall be returned within seven (7) days of City’s selection of the three (3) Offerors with the lowest Project base bids or most responsive Proposals.

### Evaluation Criteria and Factors

Proposals will be evaluated by City in accordance with the criteria and procedures outlined herein. The following parameters will be used to evaluate Proposals (with the weighted values noted below): the rating scale applied to each of the following qualifications and standards shall be from one (1) to three (3), with one (1) being a poor rating, two (2) being an average rating, and three (3) being an outstanding rating.

| WEIGHTING VALUES | QUALIFICATION                     | STANDARD   |
|------------------|-----------------------------------|--|
| 30%              | Scope of Proposal                 | Does the Proposal address all elements of this RFP? Does the Proposal show an understanding of the Project objectives, the methodology to be used in completing the Project, and the results/outcomes desired for the Project? |
| 30%              | Offeror Capability and Reputation | Does the Offeror have the resources, capacity, and support required to complete the Project in its entirety? Does the Offeror have a good safety record and sufficient qualifications?   |
| 20%              | Cost                              | Does the Project's estimated cost as identified in the Proposal compare favorably with the Project cost estimates of the City's Project Manager's and other Proposals?   |
| 20%              | Schedule                          | Are there any exceptions to the schedule outlined in this RFP for completion of all phases of Project work?  |

City may undertake negotiations with the Offeror that submits the top-rated Proposal based on the evaluation criteria and factors in this RFP, and City will not negotiate with Offerors of lower-rated Proposals unless negotiations with Offerors of higher-rated Proposals are unsuccessful and terminated. City reserves the right to reject any and all Proposals.

### Method of Evaluation, Limitation and Award

A committee designated by City (the "Evaluation Committee") will select a Proposal and Offeror using a three-step process more fully explained below. The Evaluation Committee will be comprised of to-be-determined City staff members.

#### First Step: Evaluation and Short List Selection

The Evaluation Committee will initially review and select Proposals based on the following criteria reflecting and incorporating the foregoing qualifications and standards:

- Experience and qualifications of Offeror;
- Ability of Offeror to perform Project work in the timeline and schedule outlined in this RFP;
- Cost or bid for the Project work to be performed; and
- Offeror references.

The Evaluation Committee shall rank all Offerors and their corresponding Proposals based on the information provided in the respective Proposals and any additional or follow-up information requested of Offerors and provided to the Evaluation Committee. Following such ranking, a list of no more than five

qualifying Offerors will be created (the “Offeror List”).

Possible Second Step: Interviews/Presentations from Selected Firms

The Evaluation Committee may elect to conduct interviews with, and review presentations by, two or more Offerors concerning their respective Proposals as part of the Evaluation Committee’s Proposal evaluation process. However, such interviews and reviews, if any, will only be conducted if deemed by the Evaluation Committee in its sole discretion as necessary or beneficial to further clarify or distinguish the various Proposals. Offerors acknowledge and understand that no such interviews and reviews may occur, and that the Evaluation Committee has exclusive discretion to determine whether such interviews and reviews are necessary or would benefit the Proposal evaluation process.

Third Step: Retention

One Offeror will be selected from the Offeror List (as City may revise or change the same), and any revisions to the scope of Project work will be discussed with such selected Offeror along with Project cost modifications

**Limitation and Award**

This RFP does not commit City to enter or grant a contract to complete the Project to any Offeror, and this RFP does not obligate City to pay any costs incurred by an Offeror in the preparation and submission of a Proposal. City reserves the right to cancel or change this RFP at any time.

**Proposed Timeline and Contract**

|                              |                                 |
|------------------------------|---------------------------------|
| RFP Issued                   | <b>June 28, 2024</b>            |
| Pre-Proposal Walkthrough     | <b>July 18, 2024 @ 1:00 PM</b>  |
| Deadline for Questions       | <b>July 25, 2024 @ 5:00 PM</b>  |
| Addenda Posted               | <b>July 29, 2024</b>            |
| Proposal Submission Deadline | <b>August 8, 2024 @ 3:00 PM</b> |
| Tentative Award              | <b>August 16, 2024</b>          |
| Construction Begins          | <b>August 2024</b>              |
| Construction Ends            | <b>September 2024</b>           |

**GENERAL CONTRACT TERMS AND CONDITIONS**

**1. Acceptance of RFP Terms**

A Proposal submitted in response to this RFP shall constitute a binding offer by the submitting Offeror. Acknowledgment of this condition must be indicated in such Proposal’s cover letter, and the acknowledgement must be given by an officer or employee of the submitting Offeror legally authorized to execute contracts on behalf of such Offeror. A Proposal submitted in response to this RFP shall constitute acceptance by the submitting Offeror of all terms and conditions set forth herein. An Offeror must identify clearly and conspicuously in its Proposal any variations between such Proposal and the City’s requirements in this RFP. Failure to identify such variations in a Proposal shall be deemed a waiver by the submitting Offeror of any right to subsequently modify the terms of performance specified in the Proposal or set out in this RFP, except as otherwise outlined or specified herein.



## **2. Execution, Correlation, Intent, and Interpretations**

Contract documents for the Project shall be signed by City and the Offeror that submits that Proposal ultimately selected by the City and Evaluation Committee for completion of the Project (together, the "Project Contract"). By executing the Project Contract, such Offeror (in the capacity of Offeror of the accepted Proposal, and as party to the Project Contract, hereinafter the "Contractor") shall represent and warrant that it has familiarized itself with the local conditions under which the Project work is to be performed and correlated their observations of such local conditions with the requirements of the Project Contract. All documents that comprise the Project Contract are complementary, and what is required by any party to the Project Contract shall be binding as if required by or imposed on all parties thereto. The intention of and with the Project Contract is to include and cover all labor, materials, equipment, services, and other items necessary for the proper execution and completion of the Project as defined and contemplated in this RFP and any documents, drawings, and specifications related or attached hereto or incorporated or referred to herein. All documents, drawings, and specifications furnished by City for, under, or in relation to this RFP and the Project are and shall remain City property. Such documents, drawings, and specifications are not to be used on any project or undertaking except for the Project.

## **3. Assignment**

No Offeror shall sell, assign, transfer, or convey its Proposal, and Contractor shall not sell, assign, transfer, or convey the Project Contract or any other document, drawing, or specification arising under, relating to, or resulting from the Project Contract or this RFP, in whole or in part, without the prior written approval of City.

## **4. Compliance with Laws**

All Proposals, and the Project Contract, must comply with all federal, state, county, and local laws that govern or relate to this RFP, the Project Contract, or the Project, and all the foregoing, and the Proposals and the Project Contract must satisfy all Americans with Disabilities Act ("ADA") requirements. By submitting a Proposal and entering the Project Contract, Contractor warrants that it is qualified to assume the responsibilities and render the services described in this RFP and the Project Contract, that Contractor has all requisite corporate authority and professional licenses necessary to enter the Project Contract and complete the Project, and that Contractor is in good standing and authorized to conduct business in the State of Colorado as required by law.

## **5. Debarment/Suspension**

Contractor, by submitting a Proposal and entering the Project Contract, certifies and warrants and shall certify and warrant that Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by or with any government department or agency.

## **6. Conflict of Interest**

No public official or City employee shall have a personal or proprietary interest in the Project Contract, this RFP, any Proposal, or any contract or agreement arising under or resulting from this RFP.

## **7. Contract**

This RFP, and any and all documents and agreements related hereto or submitted herewith, and any negotiations related to any of the foregoing, when properly accepted by City, shall constitute a contract equally binding by and between City and an Offeror. The foregoing shall represent the entire and integrated agreement between City and an Offeror regarding this RFP; provided, however, the Project

Contract, and all document and agreements related thereto or arising thereunder, shall supersede all prior negotiations, representations, or agreements, either written or oral, regarding the Project, including Contractor's Proposal. Notwithstanding the foregoing, the Project Contract, and the documents and agreements related thereto or arising thereunder, may collectively or individually be amended or modified with or by way of change orders, field orders, or amendments executed or otherwise approved by City.

#### **8. Cancellation of Solicitation**

Any Proposal may be canceled or rejected in whole or in part by City, and City may also reject or refuse, in whole or in part, any response given by an Offeror pursuant to a request for information or clarification by City concerning a Proposal. City may exercise the foregoing rights, and any of them, as and when deemed necessary or prudent by City in its sole discretion.

#### **9. Contract Termination**

The Project Contract shall remain in effect until the earlier of any of the following: (1) the Project Contract expires by its terms; (2) City and Contractor enter into one or more new or replacement contracts that supersede the Project Contract; (3) acceptance by City of all Project work; or (4) the Project Contract is terminated by City or by Contractor, in accordance with the terms of the Project Contract, by way of a written notice of cancellation or similarly styled notice that states the reasons for such cancellation and the effective date of cancellation, which date must be at least thirty days after such notice of cancellation is provided or submitted to the non-terminating party.

#### **10. Employment Discrimination**

By submitting a Proposal and entering the Project Contract, Contractor agrees, at all times the Project Contract is in effect or otherwise outstanding or Project work is ongoing, to all the following conditions:

Contractor 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 of Contractor.

Contractor shall post in conspicuous places, visible to Contractor's employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that such Contractor is an Equal Opportunity Employer.

Notices, advertisements, and solicitations placed by Contractor in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the foregoing requirements of this RFP.

#### **11. Ethics**

Contractor shall not accept or offer gifts or anything of value from, nor enter into any business arrangement with, any employee, official, or agent of City.

#### **12. Failure to Deliver**

If Contractor fails to deliver services in accordance with the terms and conditions of this RFP and the Project Contract, City, after due oral or written notice to Contractor, may procure such services from other sources and hold Contractor responsible for any costs resulting from additional purchase and administrative services related thereto. This remedy shall be in addition to any other remedies that City

may have hereunder or under the Project Contract.

### **13. Indemnification**

Contractor shall defend, indemnify, and save harmless City and all its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, and claims of any character, type, name, nature, or description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of Contractor, or of any of Contractor's agents, employees, subcontractors, or suppliers, in the execution of, or performance under, the Project Contract or any agreements or documents related thereto or arising thereunder or in relation to the Project. Contractor shall pay any judgment, with costs, which may be obtained against City based upon such injuries or damages.

### **14. Oral Statements**

No oral statement of any Offeror or any other person shall modify or otherwise affect the terms, conditions, or specifications stated in this RFP, and no oral statement of Contractor or any other person shall modify or otherwise affect the terms, conditions, or specifications of the Project Contract. All modifications to this RFP and the Project Contract, or either of them, must be made or agreed to by City in writing.

### **15. Expenses**

Expenses incurred in the preparation, submission, and presentation of a Proposal, or any of the foregoing, are the sole responsibility of the submitting Offeror and cannot and shall not be charged to City.

### **16. Public Funds/Non-Appropriation of Funds**

Funds for the payment of the Project have been provided through City's budget approved by its City Council for the current fiscal year only. The Taxpayers' Bill of Rights ("TABOR") in Article X, Section 20 to the Colorado Constitution prohibits the obligation and expenditure of public funds by City beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise under the Project Contract or otherwise past the end of the City's current fiscal year shall be subject to further budget approval. The Project Contract must and will be subject to, and must contain, a governmental non-appropriation of funds clause. Contractor, by entering the Project Contract, agrees and acknowledges and shall agree and acknowledge that any failure by City to fund Project obligations as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action against City whatsoever.

### **17. Collusion Clause**

Each Offeror, by submitting a Proposal, certifies and shall by such submission certify that it is not a party to any collusive action or any action that is or may be a violation of the federal Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1-38, as amended (the "Sherman Act"). Any and all Proposals shall be rejected if there is evidence or reason for City to believe that collusion exists among the Offerors, and any of them, in submitting Proposals or if Offerors have violated or may be violating the Sherman Act in submitted Proposals. City may or may not, as determined by City's Purchasing Representative in such Purchasing Representative's sole discretion, accept future proposals for the same service or commodities from Offerors that participate in any collusion or violation of the Sherman Act in contravention hereto.

### **18. Gratuities**

Each Offeror, by submitting a Proposal, warrants and certifies, and shall by such submission warrant and certify, that no gratuities or kickbacks were paid in connection with this RFP or the submission of such

Proposal, nor were any fees, commissions, gifts, or other considerations made contingent upon selecting a Proposal or entering the Project Contract. If an Offeror breaches or violates this warranty, City may, at its discretion, terminate this RFP or the Project Contract, and both of them, without liability to City.

### **19. Performance of the Contract**

In the event of a breach or default of the Project Contract by Contractor, City reserves the right to enforce the performance of the Project Contract in any manner prescribed by law or otherwise allowed under the terms of the Project Contract.

### **20. Public Disclosure Record**

If Contractor has knowledge its employee(s), or the sub-contractor(s) retained by or relied upon by Contractor, has an immediate family relationship with a City employee or elected official, Contractor must provide City's Purchasing Representative with the name(s) of such employee(s) or sub-contractor(s). Such identified employee(s) and sub-contractor(s) must file a public disclosure record, acceptable to City in its sole discretion, and a statement of financial interest before Contractor may conduct business with or for City.

### **21. Confidential and Proprietary Information**

All Proposals, and all materials submitted hereunder or otherwise in response to this RFP, shall ultimately become public record and shall be subject to inspection following selection of Contractor and the entering of the Project Contract. As used herein, "proprietary information" shall mean any information about an Offeror that is not generally known to its competitors or the public and that may provide a competitive advantage exercisable against such Offeror. Unrestricted disclosure of proprietary information, in a Proposal or otherwise, places it in the public domain. Only information included in a Proposal and clearly identified with the designation "Confidential Disclosure," and uploaded as a separate document from the remainder of a Proposal, shall be considered for treatment by City as proprietary information. A Proposal that includes material designated by the submitting Offeror as proprietary information by way of a Confidential Disclosure designation must include a justification or explanation of why the designated material constitutes proprietary information. The designation and request for treatment as proprietary information shall be reviewed and either approved or denied by City. If a designation and request is denied by City, the Offeror that submitted the Proposal shall have the opportunity to withdraw its entire Proposal or to remove the information in the Proposal designated for Confidential Disclosure. In no circumstance shall Project cost or pricing information be considered proprietary information. Additionally, a total Proposal shall not under any circumstance constitute proprietary information.

### **22. Withdrawal or Modifications of Offers**

An Offeror may, by way of a writing submitted to City, modify or withdraw a Proposal at any time prior to the Submission Deadline.

### **23. Acceptance**

Any Proposal received by City and not withdrawn by the submitting Offeror prior to the Submission Deadline is and shall be considered an offer by such Offeror, which offer may be accepted by City based on the Proposal without further discussion or negotiation. By submitting a Proposal in response to this RFP, an Offeror agrees its Proposal may be accepted by City at any time within ninety (90) calendar days from the date of the Submission Deadline. City reserves the right to: (a) reject any or all Proposals, (b) waive informalities and minor irregularities in Proposals received, and/or (c) accept any portion of a Proposal if deemed by City, in its sole discretion, to be in City's best interest. Failure of an Offeror to provide in its

Proposal any information requested in or required by this RFP may result in rejection of all or any of such Proposal for non-responsiveness.

#### **24. Proposal Preparation Cost**

The costs incurred by an Offeror in preparing or submitting a Proposal, including without limitation as to securing any bid bond, are not reimbursable costs, and City shall have no responsibility or obligation to pay or reimburse an Offeror for such costs. Proposal preparation and presentation shall be undertaken at an Offeror's sole expense and is such Offeror's total and sole responsibility.

#### **25. Award**

The Evaluation Committee will make an Offeror List, and City will ultimately select Contractor, by applying the evaluation criteria and factors listed in this RFP to the Proposals so as to ascertain the Project best value as determined by City in its sole discretion. As used herein, "best value" means the expected outcome that, in the City's sole estimation, provides the greatest overall benefit in relation to the Project and the requirements detailed in this RFP. City reserves the right to reject any or all Proposals, to not enter the Project Contract, and to otherwise not proceed with the Project.

#### **26. Substantive Proposals**

By submitting a Proposal in response to this RFP, an Offeror certifies: (a) its Proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person, firm, or corporation; (b) it has not directly or indirectly induced or solicited any other Offeror to put in a false or sham Proposal; (c) it has not solicited or induced any other person, firm, or corporation to refrain or abstain from proposing or submitting a Proposal; (d) it has not sought by collusion to obtain for itself any advantage over any other Offerors or over City; and (e) it has not violated or caused any person to violate, and shall not violate or cause any person to violate, City's Code of Ethics contained in Chapter 2.70 of the City's Municipal Code. By entering the Project Contract, Contractor shall thereby again make the foregoing certifications.

#### **27. Non-Colorado Entities**

Before entering the Project Contract, Contractor must comply with C.R.S. §§ 7-90-801 ("Authority to transact business or conduct activities required") and 7-90- 802 ("Consequences of transacting business or conducting activities without authority"). Should Contractor be an entity organized under the laws of a foreign state other than the State of Colorado, or should Contractor otherwise be operating outside the State of Colorado, Contractor must, before entering the Project Contract, obtain authorization to do business in the State of Colorado, designate a place of business in the State of Colorado, and appoint an agent in the State of Colorado for service of process. In all circumstances, Contractor must furnish City with a certificate from the Colorado Secretary of State confirming Contractor's current authority to conduct business in the State of Colorado. Contractor shall also provide to City a certified copy of the designation of place of business and appointment of agent for service of process in Colorado from the Colorado Secretary of State, or a letter from the Colorado Secretary of State stating such designation of place of business and agent for service of process has been made.

#### **28. Insurance**

Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance upon or prior to entering the Project Contract. Contractor shall not be relieved of any liabilities, claims, demands, or other obligations assumed pursuant to the Project Contract by reason of Contractor's failure to procure or maintain any such policy or policies, or by reason of Contractor's failure to procure or maintain insurance in sufficient amounts, durations, or types.

Contractor shall procure and maintain, and Contractor shall cause each subcontractor hired or retained by Contractor for the Project to procure and maintain, or Contractor shall alternatively insure the activities of its subcontractors under Contractor's own policies for, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to City in its sole discretion. All coverages shall be continuously maintained from the date of commencement of services under this RFP or the Project Contract as City may elect. In the case of any claims-make policy, Contractor shall procure the retroactive dates and extended reporting periods necessary to maintain continuous coverage.

Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Project work under this RFP or the Project Contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,00) disease - each employee.

Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence, and ONE MILLION DOLLARS (\$1,000,000) aggregate. Such policy shall be applicable to all premises and all operations of Contractor. Additionally, such policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for both contractual and employee acts), blanket contractual, independent contractors, products, and completed operations, and any other coverage reasonably required by City. Such policy shall also contain a severability of interests provision.

Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired, and/or non-owned vehicles assigned to or used in performance of Project work. The policy shall contain a severability of interests provision.

Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.

### **29. Liquidated Damages**

City and Contractor recognize and shall recognize the delays, expenses, and difficulties involved in proving the actual loss suffered by City if Project work is not timely completed. Accordingly, instead of requiring any such proof, City and Contractor agree that, as liquidated damages for delays (but not as a penalty) in completion of the Project, Contractor shall pay liquidated damages to City according to a schedule agreed upon by City and Contractor during Project Contract negotiations. Such liquidated damages will be assessed and accrue at the rate of \$500.00 per day for Project work not completed within the specified timelines of the Project Contract or this RFP.

### **30. Colorado Governmental Immunity Act**

Nothing in this RFP, and nothing in the Project Contract, shall constitute a waiver by City of any provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §§ 24-10-101 – 24-10-119, as may be amended from time to time. In all circumstances, the CGIA and its limits shall apply to this RFP, the Project Contract, and the Project, and all work related to any of the foregoing.

### **31. Payment and Performance Bonds**

Should the Project Contract exceed FIFTY THOUSAND DOLLARS (\$50,000) in value, Contractor shall furnish a performance and payment bond, at least equal to the Project Contract price, as security for the faithful performance and payment of all Contractor's obligations under the Project Contract. Contractor shall also furnish a cash warranty or warranty bond in an amount equal to ten percent (10%) of the final Project Contract value, which shall remain in effect for the duration of a guaranty period of one year after the date of final Project acceptance by City. At Contractor's option, the performance and payment bonds identified herein may be rolled over and substituted for the warranty bond, so long as such rolled over bonds remain in effect for the duration of a guaranty period of one year from the date of final Project acceptance by City. If a cash warranty is provided by Contractor, said cash shall be deposited with the City Clerk during the foregoing guaranty period. All bonds shall be in the forms prescribed by the Project Contract and be executed by such sureties as (i) are licensed to conduct business in the State of Colorado and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, amended, by the Audit Staff, Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the corresponding authority to act. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business in the State of Colorado is terminated, or it ceases to meet the requirements of clauses (i) or (ii) of this section, Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be acceptable to City in its sole discretion.

The cost of the performance, payment, and warranty bonds as described above shall not exceed 2.5 percent of the amount set forth in the Project Contract.

**Solicitation Response Form**

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

RFP: \_\_\_\_\_

Bidding Company: \_\_\_\_\_

Name of Authorized Agent \_\_\_\_\_

Email \_\_\_\_\_

Telephone \_\_\_\_\_ Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

The undersigned Offeror, in compliance with the RFP and having examined the Instruction to Bidders, General Contract Conditions, Statement of Work, Specifications, and other portions of the RFP, as well as any and all Addenda to the RFP, and having investigated the location of, and conditions affecting, the proposed Project work, hereby proposes to furnish all labor, materials and supplies, and to perform all work, for the Project in accordance with Project Contract, within the time set forth and at the prices stated below. These prices are to cover all expenses incurred in performing the Project work required under the Project Contract, of which the RFP and this Solicitation Response Form are a part.

The undersigned Offeror does hereby declare and stipulate that its Proposal is made in good faith without collusion or connection to any other Offerors and that its Proposal is made pursuant and subject to all terms and conditions of the RFP and any Addenda thereto, all of which have been examined by the undersigned Offeror.

The undersigned Offeror also agrees, if awarded the Project Contract, to provide insurance certificates within ten (10) working days of the date of notification of award from City. Submission of this form with the undersigned Offeror’s Proposal will be taken by City as a binding covenant that Offeror is and will be prepared to complete the Project in its entirety.

City reserves the right to select a Contractor on the basis of such Contractor’s Proposal being deemed most favorable, to waive any formalities or technicalities, and to reject any or all Proposals or other offers. It is further agreed that this form may not be withdrawn by an Offeror for a period of sixty (60) calendar days after the Submission Deadline. Closing time.

Submission by Offerors of clarifications and revised Proposals automatically establish a new thirty-day (30) non-withdrawal period.

Prices in the undersigned Offeror’s Proposal have not knowingly been disclosed with another Offeror and will not be disclosed prior to selection of an Offeror by City as Contractor.

- Prices in this Proposal have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition between Offerors.
- No attempt has been or will be made to induce any other Offeror, whether person or firm, to submit a Proposal for the purpose of restricting competition.
- The individual signing this Proposal on behalf of Offeror certifies they are a legal agent of the Offeror, authorized to represent the Offeror, and is legally responsible for the Proposal with regard to supporting documentation and prices provided.
- Direct purchases by City are tax exempt from Colorado sales or use taxes (Tax exempt No. 98-903544). The undersigned Offeror certifies that no federal, state, county, or municipal tax will be added to the quoted prices in the Proposal.
- City payment terms for the Project Contract shall be Net 30 days.

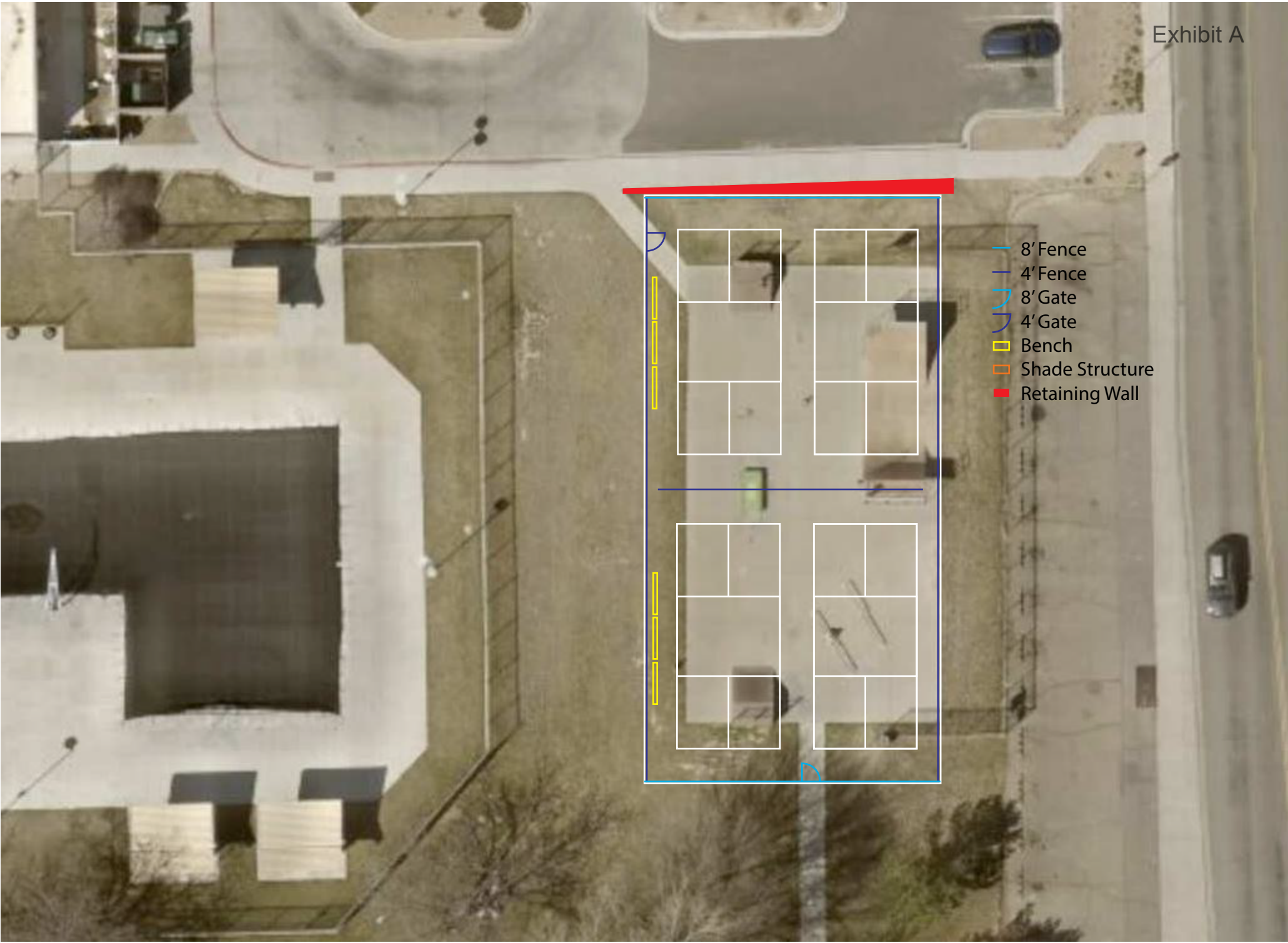
RECEIPT OF ADDENDA: the undersigned Offeror acknowledges receipt of Addenda to the RFP.

State number of Addenda received: \_\_\_\_\_.

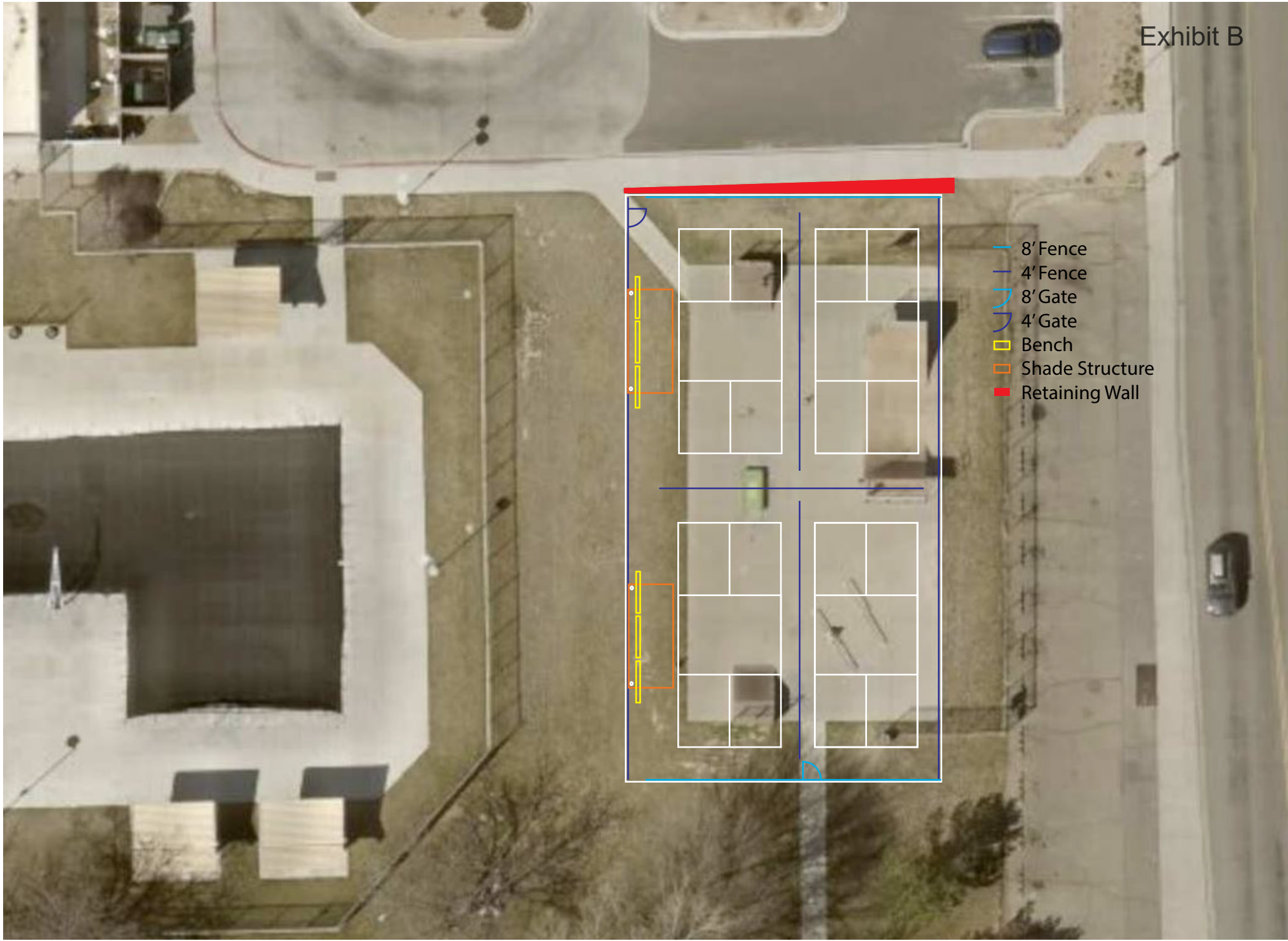
It is the responsibility of Offeror to ensure all Addenda have been received and acknowledged. By signing below, the undersigned Offeror agrees to comply with all terms and conditions contained herein.

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





- 8' Fence
- 4' Fence
- 8' Gate
- 4' Gate
- Bench
- Shade Structure
- Retaining Wall



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