

# City of Aurora

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Purchasing Services  
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**Request for Proposal:** R-2134

**Class/Item:** 918-06, 918-32, 918-46, 918-58, 918-75, 918-83, 952-23, 990-25

**Date:** November 1, 2021

**Proposal Deadline: 3:00 p.m., November 19, 2021, in the Office of Purchasing Services VIA THE ROCKY MOUNTAIN BIDNET WEBSITE**

## **REQUEST FOR PROPOSALS**

The City of Aurora ("City") is requesting written proposals from qualified consultants for a Consent Decree Monitor.

**The Aurora Municipal Center (AMC) is closed until further notice.**

### **Proposal Submittal Deadline**

Proposals shall be submitted electronically through the Rocky Mountain E-Purchasing System no later than **3:00 p.m. (MT) November 19, 2021**. (File size limit is 25 MB.) ***NO HARD COPY RESPONSES WILL BE ACCEPTED FOR THIS REQUEST FOR PROPOSAL.*** The proposals shall be retained by the City and cannot be returned. If you need assistance with the registration or proposal upload process, you may call BidNet's vendor support at 1-800-835-4603 or e-mail [e-procurementsupport@bidnet.com](mailto:e-procurementsupport@bidnet.com). **Proposals that are sent via e-mail will not be considered.**

Proposals shall consist of:

### **CONSENT DECREE MONITOR**

### **Pre-Proposal Conference**

**A pre-proposal conference is scheduled for November 8, 2021 at 11:00AM (MST). The conference will be held by WebEx only. Interested parties must contact Michelle Ratcliff, Senior Procurement Agent ([mratclif@auroragov.org](mailto:mratclif@auroragov.org)) for the WebEx meeting link.**

The purpose of the pre-proposal conference is to provide assistance to interested firms in the interpretation of the Request for Proposal (RFP), scope of the desired services, sample Professional Services Agreement, and other technical and contractual matters. **Attendance at the pre-proposal conference is not mandatory but is highly recommended.**

### **Tentative RFP Schedule**

November 8, 2021	Pre-Proposal Meeting at 11:00 am (MST) via WebEx
November 12, 2021	Deadline for questions to City of Aurora, 3:00 p.m.
<b>November 19, 2021</b>	<b>Deadline for receipt of proposals, 3:00 p.m.</b>

November 29, 2021	Notification of short-listed consultants
Week of December 6, 2021	Interviews with short-listed consultants
December 13, 2021	Selection of top-ranked consultant
December 30, 2021	Negotiations and award with top-ranked consultant completed

**Solicitation Process**

This Request for Proposal (RFP) is being solicited under a multi-phase procurement procedure. The first step requires all consultants to submit written proposals addressing those items cited in Section II, Proposal Submittal Requirements, of this RFP. Proposals will be evaluated and ranked based on the evaluation criteria outlined in Section III, Evaluation Criteria. During the second phase, interviews will be held with a short-list of consultants.

In the third phase, negotiations will be held with the consultant ranked the highest by the evaluation committee on the basis of the written proposal and interview. The City, representatives from the Office of the Colorado Attorney General, and the top-ranked consultant will negotiate the details of the final contract. Once the parties have reached an Agreement, City Council approval will be requested, if required. Upon City Council approval, the contract will be signed and work may begin. If City Council approval is determined to not be required, the contract will be signed and work may begin. Should the City be unable to reach an agreement with the top-ranked consultant, negotiations will commence with the next-ranked consultant. This process will continue until a satisfactory contract is negotiated, or the City exercises its right to reject all proposals.

Proposals will be considered only from consultants or individuals who are firmly established in an appropriate business, who are financially responsible, and who have the resources and ability to offer services in a professional and expedient manner. The City may request additional information as deemed necessary. Failure to provide such information may result in the proposal being considered non-responsive.

The City reserves the right to reject any and all proposals, to waive any informalities in the proposals received, and to accept the proposals deemed most advantageous and in the best interests of the City.

**Confidentiality**

Please be aware that proposals submitted to the City in response to this RFP shall be subject to the Colorado Open Records Law, Section 24-72-201, et seq., C.R.S. Any privileged or confidential information in the Consultant’s proposal shall be specifically identified as such by the Consultant. If any information is considered to be confidential, the Consultant shall agree to indemnify the City for any and all attorney fees the City may incur in defending the withholding of such information by signing and returning the letter found in Section IV of this RFP. Should the City receive a request for the release of any information in the Consultant’s proposal in accordance with the open records law, the City will review the Consultant’s proposal, giving consideration to the portions that the Consultant indicated contained trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data, and may release only that information which has not been identified as confidential so long as Section IV has been signed and returned by the Consultant along with the proposal. Should the Consultant choose not to sign and return Section IV, all information in the Consultant’s proposal shall may be considered releasable by the City. Consultants will be notified of any open records requests prior to the release of such information. If, in the opinion of City’s legal counsel, the City is nonetheless compelled to disclose any portion of such information to anyone or else stand liable for contempt or suffer censure or penalty, the City may disclose such information without liability.

**Licenses**

The successful consultant, without additional expense to the City, shall be responsible for obtaining any necessary licenses and for complying with any applicable federal, state, and municipal laws, codes and

regulations in connection with the prosecution of the services. The successful consultant and any subconsultants, if applicable, will be required to obtain an Aurora Business License. The successful consultant shall provide the Aurora Business License number(s) to Bryn Fillinger, Manager of Purchasing Services, within thirty (30) days of contract award.

**Addenda to the RFP**

The City of Aurora reserves the right to amend, by an addendum or addenda to this RFP, **at any time and/or a multiple number of times** prior to the date set for receipt of the submission of proposals. Addenda or amendments will only be posted and updated on the Rocky Mountain E- Purchasing System located at [www.bidnetdirect.com/colorado](http://www.bidnetdirect.com/colorado). It shall be the responsibility of the consultants to obtain all addenda from the Rocky Mountain E-Purchasing System. **Parties obtaining bid information from other sources do so understanding that their information may be incomplete, inaccurate, or out of date and therefore wholly unreliable from a commercial perspective.** Consultants registered for the paid bidding notification service shall be notified either by fax or email depending on the service that they have subscribed to. It shall be the responsibility of prospective consultants registered for the no charge, no notification service on the Rocky Mountain E-Purchasing System to monitor the Rocky Mountain E-Purchasing System for any addenda. **Failure to do so may lead to reliance on incomplete, inaccurate, or out of date information when submitting proposals subjecting such proposals to automatic disqualification from consideration.** If revisions are of such a magnitude to warrant, in the City of Aurora's opinion, the postponement of the date for receipt of proposals, an addendum will be issued announcing the new date.

**Questions**

Questions regarding this RFP shall be submitted by email to Jason Batchelor, Deputy City Manager, at [jbatchel@auroragov.org](mailto:jbatchel@auroragov.org) and to Michelle Ratcliff, Senior Procurement Agent/Purchasing Services, at [mratclif@auroragov.org](mailto:mratclif@auroragov.org) no later than November 9, 2021, at 3:00 p.m. Questions received after this date and time may not receive a response.

**CONTACTS DURING THE SOLICITATION PROCESS**

**ANY QUESTIONS, COMMENTS, OR OTHER COMMUNICATIONS SHALL BE DIRECTED TO THE CONTACTS NOTED ABOVE. NO OTHER CONTACT SHALL BE MADE REGARDING THIS RFP WITH ANY OTHER CITY STAFF, SELECTION COMMITTEE MEMBERS, COUNCIL MEMBERS, AGENTS, CONSULTANTS, ETC. DURING THE RFP PROCESS. FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL RESULT IN THE OFFENDING CONSULTANT BEING REMOVED FROM CONSIDERATION.**

**Acceptance of the RFP**

By submitting a proposal in response to this RFP, the consultant accepts all of the conditions described in this RFP, including the Professional Services Agreement, and agrees to abide by all final decisions made by the City.

CITY OF AURORA

Michelle Ratcliff  
Senior Procurement Agent/Purchasing Services

- Attachments:
- Section I Scope of Services
  - Section II Proposal Submittal Requirements
  - Section III Evaluation Criteria
  - Section IV Special Conditions
  - Section V Sample Professional Services Agreement
  - Section VI Request for Business Size Status
  - Section VII Letter of Indemnification for Withholding Confidential Information

Section VIII W-9 Request for Tax Payer Identification  
Section IX Sample Report Formats

## SECTION I

### SCOPE OF SERVICES

#### 1. OBJECTIVE

The City of Aurora, Colorado (City), with input from the Colorado Attorney General's Office (Attorney General), is soliciting proposals via this Request for Proposals (RFP) from qualified applicants, either individuals or firms, to serve as an independent monitor in the event the City enters into a Consent Decree regarding the Investigation of the Aurora Police Department and Aurora Fire Rescue dated September 15, 2021 issued by the Colorado Attorney General pursuant to Colorado Revised Statutes 24-31-113 (Report). The Agreement entered into as a result of this RFP will be for a period to cover the entire period of the potential Consent Decree.

#### 2. CONSENT DECREE MONITOR PURPOSE

The purpose of the monitor is to serve as a resource to the City, the Attorney General, and the Court to determine compliance with the decree, while also providing professional and organizational expertise and advice related to changes in policies, practices, training, and reporting required by the Consent Decree. The Consent Decree will cover the four areas identified in the Attorney General Report:

1. Racially Biased Policing
2. Use of Force
3. Documentation of Stops
4. Ketamine and Other Chemical Restraints

#### 3. SCOPE OF WORK

A. **Stakeholders.** Develop an understanding of the City of Aurora, Aurora Police Department, Aurora Fire Rescue, Civil Service Commission, and the Aurora community to effectively develop processes for new policies, training, practices, and reporting based on best practices, stakeholder input, professional expertise, and legal requirements.

- 1) Meet with the various stakeholder departments within the City to determine the scope of resources available and needed to support the required changes. Assist the departments by providing timely feedback and direction on proposed changes.
- 2) Meet with interested members of the Aurora community to provide education about the role of Consent Decree Monitor and the purpose of the Consent Decree to address the issues identified in the Attorney General's Investigation and receive feedback on both needed changes and how changes are being implemented.
- 3) Provide regular updates to the Court and Attorney General on progress of City, Aurora Police, and Aurora Fire Rescue on implementing the required changes and reaching compliance with the Consent Decree.

B. **Plan.** Based on the needs of the identified stakeholders and the requirements of the Consent Decree prepare a comprehensive Monitoring Plan [Plan] to achieve compliance.

- 1) The Report identified policy changes that are needed to address each of the Findings from the Investigation. The Plan should address processes to review, provide feedback, and monitor the development of required policy changes. The Plan should include specific mechanisms to monitor the dissemination, communication, and implementation of new and revised policies.
- 2) The Consent Decree will require new and amended training on a variety of areas as new policies, procedures, directives, and practices are implemented. The Plan should address processes to

review, provide feedback and monitor the implementation of new training. The Plan should also include specific mechanisms to monitor the effectiveness of new training and provide feedback to the departments to adopt a continuous improvement framework.

- 3) The Consent Decree will require ongoing measurement, monitoring, and reporting in the areas covered by the Report. The Plan should address processes to identify the needed information and data to appropriately track, measure, and report on the impacts and outcomes of the required policy and training changes in the Consent Decree. The Plan should include mechanisms to report progress and provide feedback to stakeholders on progress towards compliance.

The Monitor shall not be responsible for the operations of the Aurora Police Department, Aurora Fire Rescue, or the Aurora Civil Service Commission. The Monitor shall serve as a resource to the departments, the Attorney General, and the Court in developing, implementing, and tracking the impacts of the changes to reach compliance under the Consent Decree.

**Reporting.** The Monitor shall be responsible for providing regular updates on the efforts of the City, Aurora Police, Aurora Fire Rescue, and the Civil Service Commission to achieve compliance under the Consent Decree. The Parties to the Consent Decree envision public high-level quarterly progress summaries, at least for the initial phase, to the Court. The parties envision the level of detail in these reports to be similar to the update reports provided by the Office of the Internal Auditor on a quarterly and annual basis provided in Section IX. The Monitor will also develop mechanisms for engaging the Community and measuring the impacts of the City's efforts under the Consent Decree.

#### **4. SCOPE OF SERVICES**

The Monitor will be responsible for engaging in community outreach; issuing public reports to the Court on compliance with the Consent Decree; providing guidance and recommendations on compliance with the Consent Decree to the City of Aurora, the Aurora Police Department, and Aurora Fire Rescue, including reviewing and commenting on policies, training, and initiatives developed under the Consent Decree; and working closely with leadership and staff from the City, Aurora Police, and Aurora Fire.

The City expects successful bidders to adopt a team approach to the Monitor function. The Team would be comprised of a lead Monitor, supported by a small team of additional subject matter experts. Proposals should assume the Consent Decree covers a five-year monitoring period.

## **SECTION II**

### **PROPOSAL SUBMITTAL REQUIREMENTS**

Submitted proposals shall be limited to twenty (20) pages of the core proposal which does not include cover letter, index and/or table of contents, front and back covers, title page, separation tabs, and/or resumes (keep resumes to 1 page each maximum). Consultant must use 10 point font or larger. Use of figures, photographs, or other graphics within the page constraints indicated is up to the discretion of the consultant and 11"x17" pages may be included in the proposal to host graphical and geographic information and content and will be part of the twenty (20) page core proposal limit. The City cannot guarantee review of voluminous firm-specific or other information contained as an appendix. The qualified firm's proposal shall include at a minimum the following information:

**1. Transmittal Letter**

Proposal must have a transmittal letter signed by an authorized representative of the consultant's company confirming the consultant's availability to accomplish this project and a commitment to complete the project in a timely manner.

**2. General Information:**

- A. Firm Name
- B. Business Address
- C. Primary Contact Name, Telephone Number and Email Address
- D. Year Established
- E. Type of Ownership

**3. Experience**

The consultant shall submit detailed information on the consultant's background and experience as it relates to the Scope of Services. The consultant may include experience and background information on Monitoring Team members as well. For all members of the Monitoring Team, the consultant shall include all prior and current work on consent decrees and for all current work a statement of the monthly hours spent on each other consent decree by each Monitoring Team member.

**4. Relevant References**

Consultant shall provide references from three municipal/government entities where similar services have been provided. Include the name, point of contact, address and phone number, and date of engagement of said clients.

**5. Project Approach and Experience**

- A. Provide narrative detailing the consultant's philosophy and the approaches to be employed to provide the services described in the Scope of Services.
- B. Provide any additional analysis or approaches you deem to be necessary or appropriate.
- C. Provide narrative on relevant experience and expertise.

**6. Staff Resumes Assigned to Project**

Provide summary resumes of individuals who would be providing services. For each individual, describe their proposed role (including availability and proposed time commitments) and list their relevant experience. Include only personnel that would play a significant role and identify the principal contact.

**7. Project pricing and expenses**

Proposed pricing and anticipated expenses are required when the initial proposal is submitted. Pricing will be a factor in consultant selection. Pricing shall be structured either as an annual fixed price amount based on the scope of work and scope of services or hourly with an annual not-to-exceed amount. Proposed pricing can include different pricing for different years of the Consent Decree Monitoring. Pricing can include travel allowances for key team members. The final contract will include the possibility for Change Orders to allow for Pricing changes in the event of truly unexpected developments.

**SECTION III**

**EVALUATION CRITERIA**

Proposals will be evaluated on the criteria listed below.

Note: The team of key personnel presented in the proposal shall work on the project until completion. Any substitute of personnel shall require the approval, in writing, of the City. Personnel changes shall only be considered for valid reasons such as an employee leaving the firm, major illness, accident, etc. Only persons as well qualified as the originally proposed individual shall be approved.

Proposals shall be evaluated based on the following criteria:

	<b><u>Max. Points</u></b>
1. Project understanding, approach and schedule	30 points
2. Experience and availability of project team	15 points
3. Experience on similar projects, including past record of performance	15 points
4. Demonstrated ability to bring diverse perspectives and experiences to this work	10 points
5. Demonstrated experience with community and stakeholder engagement	10 points
6. Price	10 points
7. Overall quality and responsiveness of proposal	<u>10 points</u>
	100 points Total



**SECTION IV**  
**SPECIAL CONDITIONS**

**CONSULTANT RESPONSIBILITY FOR PROPOSAL COSTS**

The City is not liable for any costs incurred by any consultant associated with the preparation of a proposal, the negotiation of a contract, or for services prior to the award of the Agreement.

Selected consultants may be asked to present their proposals and/or to demonstrate ability to provide products or services to the City's representatives in Aurora or at another mutually agreeable location. The consultants shall bear all costs of such presentations.

**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

Included in this package is a sample of the standard "Professional Services Agreement" used by the City.

**INSURANCE REQUIREMENTS**

Attached to the sample "Professional Services Agreement" is a copy of the City's current insurance requirements (Form 410-33).

**INDEPENDENT CONTRACTOR**

The successful consultant is an independent contractor. **THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS. AN INDEPENDENT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP. ADDITIONALLY, IT IS UNDERSTOOD THAT THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY THE INDEPENDENT CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY OF AURORA, COLORADO.**

**SUBLETTING OF CONTRACT**

The consulting firm will agree not to assign or sublet the whole or any part of the contract without the prior written consent of the City.

**CHANGES IN SCOPE OF SERVICES**

The City Project Manager will agree that any change of scope in the services to be performed after the original contract has been signed shall be documented as a written change order, be accepted by all parties, and made a part of the original contract by amendment.

**SECTION V**

**SAMPLE**



**PROFESSIONAL SERVICES AGREEMENT**

CITY OF AURORA  
AURORA, COLORADO

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

FILE NO.: \_\_\_\_\_

P.O. NO.: \_\_\_\_\_

*(Version PSA 05 2021)*

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### **Attachments**

- Attachment 1: Scope of Work
- Attachment 2: Milestone Schedule
- Attachment 3: Compensation
- Attachment 4: Insurance Requirements

## AGREEMENT

This Agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Aurora, Colorado ("City"), and \_\_\_\_\_ ("Consultant"), with a principal place of business at \_\_\_\_\_.

**WHEREAS**, the City intends that Consultant shall perform professional services for the City; and

**WHEREAS**, Consultant represents that it has the present capacity, is experienced and qualified to perform professional services for the City as hereinafter provided in this Agreement;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants and obligations set forth herein, the Parties mutually agree as follows:

### Section 1 – Scope of Work

A. Consultant agrees to provide professional services as stated in the scope of work ("Work") specified in **Attachment 1**, attached hereto and incorporated into this Agreement.

B. The City shall have the right to disapprove any portion of Consultant's Work on the Project which does not comply with the requirements of this Agreement. If any portion of the Work is not approved by the City, Consultant shall proceed when requested by the City with revisions to the Work to attempt to satisfy the City's objections. If said revised Work is acceptable, the City will provide prompt written approval. Correction or completion of Work which does not comply with the requirements of this Agreement shall be made without adjustments to the compensation for Consultant's services provided for hereunder unless the revisions are made to Work previously approved for previous tasks, in which case, Consultant's compensation shall be adjusted. It is the intent of the parties that Consultant shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, services or other work, without additional cost to the City. The acceptance of Consultant's services by the City shall not relieve Consultant from the obligation to correct subsequently discovered defects, inaccuracies or incompleteness resulting from Consultant's negligent acts, errors or omissions.

C. Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any tasks beyond those which have been specifically authorized in writing by the City.

D. The City may, from time to time and in conjunction with Consultant, request changes in the scope of the services of the Consultant to be performed herein. Changes may include, but not be limited to, the type and scope of services provided by Consultant and the quantity or quality of Consultant's staffing for required services. Such changes, including any increase in the amount of the Consultant's compensation, which are mutually agreed upon between the City and Consultant, shall be incorporated in written change orders, amendments or extensions to this Agreement.



## Section 2 - Authority

A. \_\_\_\_\_, ("Project Manager") is the City's Project Manager and the City's authorized representative. The Project Manager is responsible for authorizing and approving all Work performed under this Agreement. All Work to be performed by Consultant shall be authorized in writing by the Project Manager as provided by this Agreement. All communications related to the Project shall be with the Project Manager and, in his absence, a person to be designated by him. The Project Manager is authorized to make decisions on behalf of the City related to the Work. The Project Manager shall be responsible for the day-to-day administration, coordination and approval of Work performed by Consultant, except for approvals which are specifically identified in this Agreement as requiring the approval of City of Aurora's City Council.

B. \_\_\_\_\_ ("Consultant's Representative") is Consultant's representative for the Work. Consultant's Representative shall have sufficient authority to represent and bind Consultant in those instances when such authority is necessary to carry out Consultant's responsibilities and obligations under the terms of this Agreement.

## Section 3 - Schedule

A. In performing professional services pursuant to this Agreement, Consultant acknowledges that timely completion of the Work is critical and time is of the essence. Accordingly, all services to be performed under this Agreement shall be commenced immediately upon execution of this Agreement by the parties hereto, approval by the City as required by applicable law, issuance of a Purchase Order from the City, and in accordance with the milestone schedule set forth in **Attachment 2**, attached hereto and incorporated into this Agreement.

B. The initial term of this Agreement shall run from the date of approval by the Aurora City Council and issuance of a notice to proceed until \_\_\_\_\_. Subject to the availability of appropriated funds, as provided elsewhere in this Agreement, and agreement between the City and Consultant concerning additional and/or continuing Work, as reflected in additional or revised scope(s) of work, this Agreement may be extended on an annual basis by the City by a written notice to Consultant after approval by the City Council.

## Section 4 - Compensation

A. The compensation to be paid Consultant under this Agreement, as provided hereinafter, covers the entire cost of the professional services under this Agreement. The initial compensation of this Agreement shall not exceed \_\_\_\_\_ (\$0.00) as more fully set forth in **Attachment 3**, attached hereto and incorporated into this Agreement. Consultant agrees to cooperate fully with the City to keep the total compensation within this limit.

B. This Agreement is subject to annual appropriation by the Aurora City Council and, in the absence of appropriated funds, the City may terminate this Agreement. The City has appropriated money for the 20\_\_\_\_ fiscal year at least equal to the foregoing annual compensation for this work. The City may, from time to time and in its sole discretion, appropriate additional amounts to reflect extensions of this Agreement beyond the close of the 20\_ fiscal year and additional and/or continuing scope(s) of work. Notwithstanding any other language in this Agreement, City shall issue no Change Order or other form of order or directive requiring additional compensable

work that will cause the foregoing annual compensation to exceed the amount appropriated unless City gives Consultant written assurance that City has made lawful appropriations to cover the costs of the additional work.

C. Nothing in this Agreement is a pledge of the City's credit, or a payment guarantee by the City to Consultant. The obligation of the City to make payments hereunder shall constitute a currently budgeted expense of the City, and nothing contained herein shall constitute a mandatory liability, charge, or requirement of or against the City in any ensuing fiscal year beyond the then current fiscal year. This Agreement shall never constitute a general obligation or other indebtedness of the City, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City. In the event of a default by the City of any of its obligations under this Agreement, the Contractor shall have no recourse against any revenues of the City. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien against any revenues of the City.

D. The City shall pay Consultant in accordance with the terms of this Agreement as reflected in the Fee Schedule set forth in **Attachment 3**.

E. Consultant shall submit monthly invoices to be approved by the City's Project Manager. Consultant shall submit its monthly invoices no later than close of business on the fourteenth (14th) calendar day of the month after which the work was performed; provided, however, that if that day falls on a weekend or holiday, then monthly invoices shall be submitted no later than close of business on the next regular business day of the month. Upon submission of an approved Consultant invoice, in the proper form, to the City, payment shall be issued. It is to be understood and agreed that the City may require up to thirty (30) days to process payment after date of receipt of invoicing.

### **Section 5 - Staffing**

A. The Consultant personnel listed below are essential to the proper performance of the services under this Agreement:

<u>Name</u>	<u>Title</u>
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The above-identified individuals are key persons and will be available to perform the Work. Consultant agrees to make key personnel available as required to perform the Work as long as such persons are employed by Consultant. Consultant shall obtain the prior written approval of the City before appointing other Consultant personnel as a substitute(s) for the above-named key personnel. The City reserves the right to reject proposed replacement personnel, or require the replacement of any Consultant personnel; however such City action shall not subject the City to any liability to Consultant nor be used by Consultant as an excuse for failure to meet the requirements of this Agreement.

B. Consultant shall insure the quality, timeliness, and continuity of services are maintained through the duration of the project. Consultant shall avoid changes to the key personnel to the extent possible.

C. Consultant shall inform the City in writing of any non-employee persons or firms it intends to hire to perform any Work required by this Agreement and shall keep the City informed of any changes or additions to this information. The City shall approve in writing any additional firms prior to commencement of Work. Consultant shall be responsible for any Work performed under this Agreement, including that portion of the Work performed by other individuals or firms. Nothing contained herein shall create any contractual relationship between any additional persons and/or firm(s) and the City.

#### **Section 6 - Insurance**

A. Consultant shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in **Attachment 4**. The Consultant further agrees and understands that they are to maintain and keep in force the appropriate insurance policies throughout the term of this Agreement.

B. Consultant shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Consultant, its agents and employees. If Consultant knows of the damage Consultant shall immediately notify the City. If the City discovers the damage, City will notify Consultant immediately. Repair shall be accomplished under City direction and to City specifications so property is in as good or better condition than before damage. Consultant shall provide the City with a certificate of liability coverage in accordance per the attached form 410-33, **Attachment 4**.

C. The Consultant's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.

D. Nothing herein is intended to be construed or shall be construed to be a waiver of the City's governmental immunity under Section 24-10-101 et. seq., C.R.S. as amended.

#### **Section 7 - The City's Responsibilities**

A. The City shall:

1. Provide necessary information to Consultant to facilitate Consultant in performing the Work;

2. Give prompt notice to Consultant whenever the City observes or otherwise becomes aware of any deficiencies or discrepancies in the services provided;

3. Furnish, or direct Consultant to provide, at the City's expense, any necessary additional services;

4. Examine all documents submitted by Consultant, and, if requested by Consultant, provide comments and decisions in a timely manner in order to allow the Consultant's work to proceed.

B. Consultant shall not be liable for delays in performing the Work when such delays are caused by the City, the City's other Consultants, or by events which are outside of the control of the Parties and which events could not be avoided by the exercise of due care.



## **Section 8 - Mutual Obligations**

- A. This Agreement does not guarantee to Consultant any additional or future work except as expressly authorized herein.
- B. This Agreement does not create or imply an exclusive agreement between Consultant and the City.
- C. The services and any and all interests contemplated under this Agreement shall not be assigned or otherwise transferred except with the written consent of the City.
- D. All documents of any nature prepared by Consultant in connection with the services provided by Consultant under the terms of this Agreement shall become the property of the City.
- E. Consultant shall not utilize work product, data, information, results, and materials produced as part of its efforts under this Agreement for any promotional or public relations purposes whatsoever without the express, prior, written consent of the City.

## **Section 9 - Termination**

- A. Termination for Cause - In the event a material breach of this Agreement remains uncured following written notice of said breach by City, the City may immediately terminate this Agreement upon written notice specifying the effective date thereof; provided however, the City may, in its discretion and for good cause, allow Consultant to cure any breach or submit an acceptable plan to cure such breach within ten (10) days of such written notice.
- B. Termination for Convenience
  - 1. Change in City Policy. The City may terminate this Agreement at any time upon thirty (30) days notice specifying the date thereof, provided Consultant shall be compensated in accordance with this Agreement for all work performed up to the effective date of termination.
  - 2. The City's total liability under this Agreement, inclusive of termination costs, shall not exceed the lesser of total amount of this Agreement or the total amount of funds which have been appropriated specifically for this Agreement.
  - 3. Consultant shall be entitled to reasonable incurred costs for terminating its activities under this Agreement, including those of its sub-consultants, if this Agreement is terminated for the City's convenience; provided however, in no event shall the City's total liability to Consultant exceed the total amount of funds which have been appropriated specifically for this agreement.
- C. Effect of Termination
  - 1. Termination Costs. After receipt of written notification that this Agreement has been terminated under this section, Consultant shall incur no further costs other than reasonable termination costs associated with current activities.

2. Ownership of Work Product. In the event of termination, all finished and unfinished Project deliverables prepared by Consultant pursuant to this Agreement shall become the sole property of the City, provided Consultant is compensated in accordance with this Agreement for all work performed in accordance with this Agreement up to the effective date of termination. Consultant shall not be liable with respect to the City's subsequent use of any incomplete work product, provided Consultant has notified the City in writing of the incomplete status of such work product.

3. City's Right to Set-Off and other Remedies. Termination shall not relieve Consultant from liability to the City for damages sustained as the result of Consultant's breach of this Agreement; and the City may withhold funds otherwise due under this Agreement in lieu of such damages, until such time as the exact amount of damages, if any, has been determined.

4. If this Agreement terminated for cause as provided in this section and it is subsequently determined that the City's termination of this Agreement for cause was improper, then the termination for cause shall be considered to be a termination for convenience and the procedures in this section related to a termination for convenience shall apply.

### **Section 10 - Miscellaneous Provisions**

A. Consultant, at all times, agrees to observe all applicable Federal and State of Colorado laws, Ordinances and Charter Provisions of the City of Aurora, and all rules and regulations issued pursuant thereto, which in any manner affect or govern the services contemplated under this Agreement.

B. Consultant shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, age, sex (gender), religion, creed, or physical or mental disability. Consultant:

1. Shall adhere to lawful equal opportunity guidelines in selecting employees, provided that no person is illegally discriminated against on any of the preceding bases. This provision shall govern, but shall not be limited to, recruitment, employment, promotion, demotion, and transfer, and advertising therefor; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship;

2. Shall post, in all places conspicuous to employees and applicants for employment, notices provided by the State of Colorado setting forth the provisions of this nondiscrimination clause. All solicitations and advertisements for employees placed by or on behalf of the Consultant, shall state that Consultant is an equal opportunity employer;

3. Shall cause the foregoing provisions to be inserted in all subcontracts for any work contemplated by this Agreement or deemed necessary by Consultant, so that such provisions are binding upon each sub-consultant;.

4. Shall keep such records and submit such reports concerning the racial and ethnic origin of employees and of applicants for employment as the United States, the State of Colorado, the City of Aurora, or their respective agencies may require; and,

5. Shall comply with such rules, regulations and guidelines as the United States, the State of Colorado, the City of Aurora, or their respective agencies may issue to implement these requirements.

C. By executing this agreement, Consultant acknowledges an understanding of and expressly agrees that all work performed under this Agreement is that of an independent contractor. An independent contractor is not a City of Aurora employee and as such is not entitled to Workers' Compensation benefits. Consultant is obligated to pay Federal and state income tax on any monies earned pursuant to the contractual relationship. It is expressly understood between the City of Aurora and Consultant that Consultant, as an independent contractor, is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Consultant or some entity other than the City of Aurora, Colorado.

D. All notices, demands, or other documents or instruments required or permitted to be served upon either Party hereto shall be in writing and shall be deemed duly served when delivered in person to an officer or partner of the Party being served, by facsimile transmission or when mailed certified or registered mail, return receipt requested, postage prepaid addressed to parties at the addresses stated below:

City: Office of the City Attorney  
15151 East Alameda Parkway  
5<sup>th</sup> Floor  
Aurora, Colorado 80012

Consultant Representative:

**Section 11 - Examination of Records** (This section applies if this Agreement exceeds \$10,000.00.)

A. The Internal Auditor of the City of Aurora, or a duly authorized representative from the City of Aurora shall, until three (3) years after final payment under this Agreement, have access to and the right to examine any of the Consultant's directly pertinent books, documents, papers, or other records involving transactions related to this Agreement.

B. Consultant agrees to include in first-tier sub-consultants under this Agreement a clause to the effect that the City's Internal Auditor, or a duly authorized representative from the City of Aurora shall, until three (3) years after final payment under the subcontract have access to and the right to examine any of the Consultant's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders from public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

C. The periods of access and examination as noted above for records relating to (1) litigation or settlement of claims arising from the performance of this Agreement, or (2) costs and expenses of this Agreement to which the City, acting through its duly authorized designee, has taken exception, shall continue until such appeals, litigation, claims, or exceptions are finally resolved.

**Section 12 – Worker Without Authorization**

A. UNLAWFUL EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS: Consultant shall not knowingly employ or contract with a worker without authorization to perform work under this Contract. Consultant shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with workers without authorization to perform work under this Contract and (b) fails to certify to the Consultant that the subcontractor will not knowingly employ or contract with a worker without authorization to perform work under this Contract.

B. VERIFICATION REGARDING a worker without authorization to: By executing this contract, Consultant confirms the employment eligibility of all employees who are newly hired for employment to perform work for this project through participation in either the Federal E-Verify program or the Colorado Department of Labor Department Program.

C. LIMITATIONS: Consultant shall be prohibited from using either the Federal E-Verify Program or the Colorado Department of Labor Department Program procedures to undertake pre-employment screening of job applicants.

D. DUTIES OF CONSULTANT: If Consultant obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with a worker without authorization to, the Consultant shall be required to:

1. Notify the subcontractor and the City within three days that the Consultant has actual knowledge that the subcontractor is employing or contracting with a worker without authorization to; and

2. Terminate the subcontract with the subcontractor if, within three days of receiving the notice the subcontractor does not stop employing or contracting with the a worker without authorization to; except that the Consultant shall not terminate the contract with the subcontractor if the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization to.

E. DUTY TO COMPLY WITH STATE INVESTIGATION: Consultant shall comply with any request made by the Colorado Department of Labor or the City in the course of an investigation that the Department or the City is undertaking

F. DAMAGES: Notwithstanding any other provisions within this contract, if the Consultant violates any of the above provisions regarding a worker without authorization the City may terminate this contract for cause and the Consultant may be liable for consequential damages.

### **Section 13 - Indemnification**

A. The Consultant shall indemnify, hold harmless and, not excluding City's right to participate, defend the City, its officials, officers, employees, volunteers and agents from and against all liabilities, actions, losses, claims, damages, costs and expenses, including without limitation reasonable attorney fees and costs, expert witness fees, arising out of or resulting in any way from the performance of Consultant's services for the City and caused by negligent acts, errors, and omissions of the Consultant or any person employed by it or anyone for whose act the Consultant is legally liable.

B. The insurance coverage specified in this Agreement constitutes the minimum requirements and these requirements do not lessen or limit the liability of Consultant hereunder. Consultant shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary under this Agreement.

C. Patents Infringement: The Consultant shall indemnify, defend and hold harmless the City Indemnities from and against all suits or actions for infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to the services under this Agreement. The Consultant's indemnity pursuant to this Section shall apply only when infringement occurs or is alleged to occur from the intended use for which the deliverable material was provided by the Consultant pursuant to this Agreement. Consultant shall not be held liable for any suits or actions of infringement of any patent, trademark, or copyright arising out of any patented or copyrighted materials, methods, or systems specified by the City under the Agreement or Change Order or infringement resulting from unauthorized additions, changes or modifications to the deliverable material made or caused to be made by the City subsequent to delivery by the Consultant. Consultant also agrees to notify the City upon the knowledge of any potential infringement claim, so that the City may provide input on suggested solution.

D. Consultant agrees that it will contractually obligate its sub-consultants to indemnify and hold harmless the indemnitees identified in this Section to the same extent that Consultant is required to indemnify and hold harmless said indemnitees.

In **WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF AURORA, COLORADO**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
*City Clerk*

RISK MANAGEMENT: \_\_\_\_\_  
*Risk Manager*

APPROVED AS TO FORM: \_\_\_\_\_  
*Assistant City Attorney*

**CONSULTANT**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Type or Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

## Attachment 4

### INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Purchase Order or contract, the Consultant performing services under this agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Consultant, their employees, subcontractors or representatives, along with the activities of any and all subcontractors retained by the or the activities of anyone employed by any of them, or their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** The Consultant shall maintain commercial general liability insurance covering all operations by or on behalf of the Consultant on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence  
\$2,000,000 general aggregate  
\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** The Consultant shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured.

**Workers' Compensation and Employers Liability Insurance.** The Consultant shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, the Consultant shall maintain Employers Liability Insurance with minimum limits of: \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease each employee and \$1,000,000 bodily injury disease aggregate.

**Subcontractor's Insurance** It shall be the responsibility of the vendor/contractor to ensure that subcontractors maintain:

- A. Commercial General Liability insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate and shall name the City of Aurora as an additional insured; and
- B. Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado and Employers Liability Insurance with minimum limits of: \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease each employee and \$1,000,000 bodily injury disease aggregate.

The Consultant is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and throughout the time that the subcontractor performs work on the project. Any subcontractor which ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general or automobile liability and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** The Consultant shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General Liability, Auto

Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, the Consultant shall provide certificates of insurance to the City of Aurora demonstrating that at the minimum coverages required herein are in effect. Consultant agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Vendor's or Contractor's or its subcontractor's coverage is renewed at any time prior to completion of the services, the Consultant shall be responsible for obtaining updated insurance certificates for itself and such subcontractors from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Consultant shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City of Aurora in response to the particular circumstances giving rise to the contract. **The Consultant's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** The Consultant shall maintain professional liability insurance with minimum limits of Two Million Dollars (\$2,000,000), covering those claims which arise out of the negligent acts or omissions of the Consultant, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Consultant's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days after renewal.





**SECTION VI**

**REQUEST UNDER THE COLORADO OPEN RECORDS ACT**

Proposals submitted by consultants in response to the City of Aurora's **Request for Proposal R-2134** are subject to the Colorado Open Records Act. Should the City receive a request for the release of any information in the Consultant's proposal in accordance with the open records law, the City will review the Consultant's proposal, giving consideration to the portions that the Consultant indicated contained trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data, and may release only that information which has not been identified as confidential and/or proprietary in your proposal pursuant to C.R.S. 24-72-201.

By having an authorized officer of the company sign below, consultant agrees to indemnify the City of Aurora for any and all attorney fees that the City may incur in defending the withholding of such information.

\_\_\_\_\_  
**Consultant**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Type or Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## SECTION VII

### REQUEST FOR BUSINESS STATUS

Please provide the information requested below.

The North American Industry Classification System (NAICS) code for this award is 541611.

The small business size standard the City of Aurora designates for this award is  
**\$8.25 Million**  U.S. dollars     Employees

Identify the business size status of your firm based on the above small business size standard:

- Large Business
- Small Business Enterprise

If your business is a Small Business Enterprise, please identify if your firm is in one of the following categories

- Minority-owned vendor
- Woman-owned vendor
- Minority/woman-owned vendor
- Veteran
- Disabled Veteran
- Other

From what source did you learn about his solicitation to which you are now responding?

- Website;
- Newspaper (please name the paper);
- Fax;
- Automatic notice by E-mail;
- Telephone call from buyer;
- Other (please describe): \_\_\_\_\_

**SECTION VIII**

**W-9**

**REQUEST FOR TAX PAYER IDENTIFICATION NUMBER AND CERTIFICATION**

Form W-9 can be found at the following link:

<http://www.irs.gov/uac/Form-W-9,-Request-for-Taxpayer-Identification-Number-and-Certification>

SECTION IX

**SAMPLE** REPORT FORMATS



2020 IA Annual  
Progress Report as of



2020 IA Quarterly  
Report as of 9.30.2020



2020 IA Quarterly  
Report as of 6.30.2020



2020 IA Quarterly  
Report as of 3.31.2020



2020 Approved  
Annual Audit Plan FIN